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## LATCRIT PRAXIS @ XX: TOWARD EQUAL JUSTICE IN LAW, EDUCATION AND SOCIETY

TAYYAB MAHMUD\*, ATHENA MUTUA\*\* & FRANCISCO VALDES\*\*\*

### INTRODUCTION

It was twenty years ago this fall that a motley crew of youngish legal scholars conceived the “LatCrit” subject position during a colloquium on Latinas/os and critical race theory held in Puerto Rico during fall 1995.<sup>1</sup> By the end of that event, we had committed to at least one decade of personal and collective praxis toward the advancement of critical outsider jurisprudence in various methodological and substantive ways under the LatCrit rubric.<sup>2</sup> And, closing that same academic year during the Cinco de Mayo weekend in 1996, the First Annual LatCrit Conference (LatCrit I) took the first step in the programmatic articulation of this jurisprudential experiment.<sup>3</sup> Since then, this always fluid, multiply diverse and far-flung community of activist scholars has spearheaded dozens of programs and publications spanning a wide range of issues and topics in law, education and society in local as well as global contexts.<sup>4</sup>

\* Professor, Seattle University School of Law. I want to thank the LatCrit community for enduring friendships and productive intellectual engagements.

\*\* Professor, SUNY Buffalo Law School. I would like to thank all those who engage critical legal thought and those who support our efforts.

\*\*\* Professor, University of Miami Law School. I thank the pioneers, colleagues and allies that make our work today possible; the editors and authors that make this timely, compelling Symposium a reality; and my co-authors in this Foreword for enriching friendships and collaborations.

1. See Colloquium, *Representing Latina/o Communities: Critical Race Theory and Practice*, 9 BERKELEY LA RAZA L. J. 1 (1996) (San Juan, P.R.).

2. See Berta Hernandez-Truyol, Angela Harris & Francisco Valdes, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L. J. 169, 257 (2006).

3. See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997).

4. See Francisco Valdes, *Theorizing and Building Critical Coalitions: Outsider Society and Academic Praxis in Local/Global Justice Struggles*, 12 SEATTLE J. SOC. JUST. 983, 1036 (2014) (Charts A–D).

During this time, LatCrit and allied scholars have striven to engage the issues of the day in critical and self-critical terms. As the historical record attests, and as outlined below, we have covered much ground in knowledge production, posted important gains in infrastructure development, and helped to make a difference in the fortunes of critical outsider studies within and beyond the legal Academy of the United States. Yet our advances are as fragile as ever, if not more so.

Today, as in the 1990s, we live in times marked by the turbulence of reactionary backlash—the rollback of equality gains across U.S. society that, in the context of legal academia, many of us literally embody. Since the 1990s, we have developed our programmatic infrastructure like never before, but during these very same times, the furies of retrenchment have multiplied exponentially. We are stronger, yet more besieged, than two decades ago. Today, as in the 1990s, we work under the shadows of thickening contradictions that increasingly challenge, if not dismiss, our very right to do our work in law and education, and across society.

While contradiction is no surprise in law, these are times of extreme social contradiction driven, in great measure, by unjust acts of law. This corrosive zeitgeist of suppressive contradiction is evidenced across society in myriad everyday ways determined largely by backlash policy and politics. Wealth is up, as is poverty, exacerbating age-old patterns of socio-economic identitarian stratification.<sup>5</sup> A black family lives in the White House while black youths are daily slaughtered from coast to coast by vigilantes as well as police, all with apparent criminal impunity.<sup>6</sup> Having broken untold numbers of glass ceilings, women sit at the apex of the biggest corporate pyramids in world history while their access to gender-specific liberty and equality is under breathtaking legal contraction.<sup>7</sup> The country's demography is more plural than ever before even as its democracy is under the grip of its

5. For a selection of readings, see Patricia Cohen, *Fueled by Recession, U.S. Wealth Gap is Wildest in Decades, Study Finds*, N.Y. TIMES, Dec. 18, 2014, at B3; Nicholas Kristof, *When Whites Just Don't Get It*, N.Y. TIMES, Aug. 31, 2014, at 11; Richard Fry & Rakesh Kochhar, *America's Wealth Gap Between Middle-Income and Upper-Income Families is Widest on Record*, PEW RES. CTR. (Dec. 17, 2014), <http://www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/>.

6. For a sampler, see Kali Akuno, *The Context for Operation Ghetto Storm*, in OPERATION GHETTO STORM: 2012 ANNUAL REPORT ON THE EXTRAJUDICIAL KILLINGS OF 313 BLACK PEOPLE BY POLICE, SECURITY GUARDS AND VIGILANTES, available at [http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new\\_all\\_14\\_11\\_04.pdf](http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new_all_14_11_04.pdf) (last updated Nov. 14, 2014); Steve Martinot, *On the Epidemic of Police Killings*, 39 SOC. JUST. 52 (2014); Ruby Sales & Susan Smith, *A National Shame*, SOJOURNERS, Aug. 2014, at 10.

7. For a sense of the times, see Michele Estrin Gilman, *Feminism, Democracy, and the "War on Women"*, 32 LAW & INEQ. 1 (2014).

Big Money elites like never before since Hoover's age nearly a century ago.<sup>8</sup> Human rights are more robust than ever, but mainly for corporations and their already-empowered masters.<sup>9</sup> More people understand U.S. society is unhinged from all its professed fundamentals yet the derangement of unbounded power grows, increasingly openly so, in leaps and bounds.

These gnawing contradictions, and the layered, fluid challenges they pose for justice studies and struggles, frame the social order for legal education and set the overall context for LatCrit praxis today and tomorrow. As underscored below, these are the macro-conditions of production that we must negotiate, transcend and harness toward our continued micro-work as anti-subordination academic activists. These are the present and foreseeable circumstances that we must understand, use and exploit in principled yet strategic ways in order to stay grounded as well as to stay vital in this increasingly daunting socio-legal context.

In short, everyday events make plain that justice and equality remain under unabated attack, perhaps even more so than ever before. Today, like yesterday, calls for nimble and imaginative outsider coalitions and criticalities. After two decades of LatCrit theory, community and praxis, what might—or must—a third decade thus yield in substance or method to challenge and transcend the current context of crisis in law, education or society?

These pressing questions remain uneasily open. The arc of history continues to unfold, and hopefully to bend toward justice, but ultimate outcomes remain contingent. Much may depend on what we do, or don't. At this point, then, perhaps only one thing is certain: today, as two decades ago, LatCritters, along with the Academy and the Nation, stand poised at another key cusp in the historical struggle toward the long-professed goal of equal justice for all. Today, as two decades ago, we must be prepared to remain in the struggle for the longest of hauls.

8. For example, see Mark C. Alexander, *Citizens United and Equality Forgotten*, 35 N.Y.U. REV. L. & SOC. CHANGE 499 (2011); David Schultz, *Liberty v. Elections: Minority Rights and the Failure of Direct Democracy*, 39 HAMLINE J. PUB. L. & POL'Y 169 (2012); Adam Lioz & Liz Kennedy, *Democracy at Stake Political Equality in the Super Pac Era*, HUM. RTS. MAG. (2012), available at [http://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/2012\\_vol\\_39\\_/winter\\_2012\\_-\\_vote/democracy\\_at\\_stakepoliticalequalityinthesuperpacera.html](http://www.americanbar.org/publications/human_rights_magazine_home/2012_vol_39_/winter_2012_-_vote/democracy_at_stakepoliticalequalityinthesuperpacera.html); Timothy Karr, *Don't Believe the Spin. Dark Money Won*, COMMON BLOG (Nov. 20, 2012), <http://www.commonblog.com/2012/11/20/dont-believe-the-spin-dark-money-won/>.

9. See, e.g., *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (declaring corporations to be "persons" with religious liberty).

For this reason, LatCrit projects have always been designed and launched with continuity, progression and flexibility in mind. Over the years, as discussed below, we have cultivated internal pipelines to ensure the continuation, as well as the evolution, of our programmatic initiatives.<sup>10</sup> Having learned the lessons of racial realism from our predecessors,<sup>11</sup> we have accepted from inception that our efforts would outlast any one of us, and perhaps all of us. Through varied means of communication and internal self-governance, including planning retreats, project workshops, self-studies and strategic planning, the LatCrit community consciously and consistently has prioritized inter-generational horizons in all we have undertaken.

Thus, equally important to the two decades of programmatic praxis outlined in this Foreword are the individual scholars who embody the ranks of the rising generations featured in this Symposium. Like the work of the past two decades, scholars, and works like the ones discussed below, reflect and project the aspirations that motivate us as a critical community.<sup>12</sup> Their work, as the Symposium shows, spans issues both of theory and praxis, illustrating the LatCrit approach to legal knowledge production as we stand at the cusp of this third decade. As a set, these rising scholars explore new or emergent domains of lived justice in law, education and society that will help shape and constitute the critical agenda for the decade to come. Even as we write about the future and prepare for it, we look squarely and joyfully at it in the faces and texts of the authors presented below.

This Symposium should itself therefore be understood as an example of LatCritical praxis. This Symposium is a considered choice to mark the twentieth anniversary of this jurisprudential experiment with a forward-looking spotlight on rising generations and issues. For this reason, we begin with some notes on LatCrit praxis before turning to the substance of the scholarship presented in this Symposium.

As this Foreword and Symposium confirm, the LatCrit experiment emerged from, and today remains embedded in, the cultures of academia—U.S. legal academia, in particular. Inevitably, LatCritical work therefore has been, and is, shaped by the histories of academia as part of larger U.S. society. Our workplaces, without doubt, are as affected and afflicted by the same types of institutional or systemic wrongdoing as mark the rest of American society, both historically and currently.

10. See *infra* Parts I.B., I.C.

11. See Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992) (on racism's permanence).

12. See *infra* Part III.

Consequently, LatCrit work could not and cannot help but be sensitive to identity and to its multifarious forms of politics, and especially to the politics of hierarchy and to the invidious use of law in ever-more coded ways for this ever-constant purpose, both in our workplaces and across society at large. A review of our conference program themes, or of the publications appearing in our symposia, makes plain our consistent engagement of identitarian injustice in multifaceted contexts.<sup>13</sup> A review of our efforts makes equally plain our keen focus on legal academia as a key front in identity-based justice struggles.<sup>14</sup>

More specifically, these two decades of work reflect our constant and continuing commitment to the evolving construction of a new model of legal knowledge production that would stand in contrast specifically to the “imperial” model of mainstream traditions.<sup>15</sup> Our approach has valued interactive knowledge production involving multiply diverse participants specifically over the atomized practices promoted by the dominant norms of legal academia. Our conferences and other community projects—involving “different” types of participants in deliberately arranged programs—have been, and are, configured and conducted to create the programmatic and substantive conditions for this coalitional approach. This basic approach, made concrete in the form of the varied LatCrit community projects, encapsulates core aspects of LatCrit praxis during the past two decades.

Over time, this approach has prompted us to conceptualize specific practices designed to apply theory to action, as well as to generate theory from action—and experience.<sup>16</sup> In programmatic terms, this critical and self-critical dynamic gave rise to “collective personal praxis” as a way of describing our blending of individual and communal action in the form of projects and publications.<sup>17</sup> This LatCritical type of personal yet collective praxis in turn has supported new projects or initiatives, thereby generating our community Portfolio of Projects, which incrementally produced the OutCrit shift from the “safe space” provided by periodic events to a year-round “safe zone” of collectively

13. LATCRIT, <http://www.LatCrit.org/index/> (last visited Feb. 24, 2015); *Overview of LatCrit Publications*, LATCRIT, <http://www.LatCrit.org/content/publications/> (last visited Feb. 24, 2015).

14. See *id.*; *The LatCrit Portfolio of Projects: 2012–2013*, LATCRIT, <http://LatCrit.org/content/about/portfolio-projects/> (last visited Feb. 25, 2015).

15. For an in-depth discussion, see Margaret E. Montoya & Francisco Valdes, “Latinas/os” and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production, 4 FIU L. REV. 187 (2008).

16. See *infra* Part I.A.

17. See Hernandez-Truyol, Harris & Valdes, *supra* note 2, at 269.

coordinated activities during our first decade of this LatCrit experiment in critical outsider jurisprudence.<sup>18</sup>

This big-tent, or open, approach to theory and community in turn has helped to foster democratized relationships of knowledge production and professional solidarity, which in turn has provided essential glue for additional anti-subordination praxis within legal education itself.<sup>19</sup> Our programmatic events have been designed to foster and facilitate organic networking that can lead to new synergies, initiatives or projects.<sup>20</sup> Bit by bit, this work has helped to foster overlapping partnerships or networks of scholars and projects in variegated, organic ways which, in turn, have enriched the theoretical and professional ecosystem of critical outsider jurisprudence overall. Bit by bit, this work helps to create the conditions for critical discourse, curricula, programs and pedagogies across the mainstream institutions of legal education.

Recognizing the Academy itself as a site of enormous power in U.S. society, and recognizing our specific training, expertise and skills in law, the LatCrit community also has undertaken various programmatic initiatives—like the Student Scholar Program (SSP), Junior Faculty Development Workshop (FDW) and Critical Global Classroom (CGC)<sup>21</sup>—that focus on legal education substantively. These praxis efforts flow from our conviction that, as critical and outsider legal educators, we are uniquely situated to make a difference in legal education.<sup>22</sup> Therefore, while committed to the advancement of social justice more broadly, LatCrit praxis always has reflected our recognition of collective responsibility to use our particular professional knowledges and capacities as critical and outsider legal educators to help make legal education more sensible, accessible and just in varied ways.

This last point is crucial, and bears some emphasis. Never have LatCritters doubted the need to engage *both* legal academia as well as society at large. Never have we considered one or the other secondary. Indeed, this key point of interlocking linkage helps to explain why theory, community and praxis have been so tightly twined in LatCritical

18. See Elizabeth M. Iglesias & Francisco Valdes, *LatCrit at Five: Institutionalizing A Postsubordination Future*, 78 DENV. U. L. REV. 1249 (2001) (assessing the first five years).

19. See Steven W. Bender & Francisco Valdes, *At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 14 HARV. LATINO L. REV. 397 (2011) (explaining the anchors and practices of work).

20. *Id.* at 409–14.

21. See *infra* Parts I.B., I.C.

22. See Montoya & Valdes, *supra* note 15, at 189–201.

work for two full decades. This key point is underscored with added pressures today by the prevalent politics of crisis and austerity that we face at the cusp of a third decade.

Importantly, we also have understood from the outset that “identity politics” are not a new phenomenon, but a fundamental feature of the U.S. Republic since its founding in the Constitution of 1789. Indeed, as evident in artifacts like the Federalist Papers, colonial and neocolonial identity politics quite patently centered on religion and region, as well as on race, gender and class.<sup>23</sup> It is no coincidence that the Constitution accommodates white supremacy in manifold ways,<sup>24</sup> or that the first Act of Congress on immigration and naturalization limited citizenship to “white” persons.<sup>25</sup> As history records, George Washington signed the 1789 Act into law, and thereby began to coerce the skewing of the Republic’s demography by law for centuries to come—until the mid-twentieth century: 1952, to be precise.<sup>26</sup> Coincidentally, or perhaps not, this was the very same decade when many of those later to become LatCritters were born. The racial state<sup>27</sup> is not an abstract or historical construct to LatCrit projects, communities and networks.

It therefore is no surprise, at least not to us, that the politics of personal decolonization and communal liberation necessarily implicate and correspondingly track the politics of identity laid down by dominant forces since colonial and during neo-colonial times. But, at the same time, our purpose has been the disruption of traditional neo-colonial hierarchies—and the dismantling of correlating inequalities. Our basic approach has been to learn from the past as we look and lean forward.

As we stand at the cusp of a third decade, and as we celebrate and support rising generations of LatCrit and allied scholars in this Symposium, we therefore cannot avoid noting some of the continuities and discontinuities between 1995 and now in this Foreword. As we look toward a third decade of our collaborative work, we cannot help but mark the patterns and particularities that define LatCrit praxis then as well as now. As always, we try below to situate our labors and goals in

23. See, e.g., THE FEDERALIST NOS. 10, 51 (James Madison).

24. POWER PRIVILEGE AND LAW: A CIVIL RIGHTS READER (Leslie Bender & Dann Bravemen eds., 1995).

25. See Ian F. Haney, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 37–47 (1996).

26. Immigration, Naturalization and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

27. See generally DAVID THEO GOLDBERG, THE RACIAL STATE (2002).



the context of the moment to help us chart collective ways forward in theory, community and praxis.

For this jurisprudential community specifically, this multidimensional cusp includes at least three axes of internal and external change: generational transitions, programmatic evolutions and structural dislocations. It must entail recognition and accommodation of shifting circumstances, both external and internal to the LatCrit community and allied networks of critical outsider—or OutCrit<sup>28</sup>—scholars. These transitions, evolutions and dislocations, we urge, should inform the forms and directions of our impending work as we stand at the cusp of a third decade.

To introduce the papers of this Symposium as a cohesive set, and to help situate them substantively and temporally in this historical moment, we therefore begin below with some brief notes and observations on LatCritical context. We begin with a brief synthesis of where we are, and how we got here, and then discuss parallel events and allied formations that also help to establish a sense of OutCritical context, before turning to a substantive discussion of the papers in this overall context. In Part I, we therefore focus on LatCrit specifically, while in Part II we turn to the development of ClassCrit legal studies in recent years, and in Part III we take up the papers of the Symposium to situate them substantively and thematically in the context of this moment. We hope, in the end, to help LatCrit scholars, and allied networks of OutCritical communities, to chart principled coalitional directions forward during a time of internal generational transitions and heightened, intricately layered, external perils.

### I. THE LATCRIT EXPERIMENT: HIGHLIGHTS AND TAKEAWAYS, 1995–2015

As we survey the landscape of the moment, we cannot help but be struck by the deep similarities *and* differences that mark 1995 and 2015. Internally, as well as externally, the fundamentals seem as solid or constant as before, even while circumstances and paradigms shift. Perhaps, and perhaps like always, now may be both the best and worst

28. The "OutCrit" denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet "different" subordinated groups in an interconnective way. By "OutCrit" we thus mean (at least initially) those scholar who identify and align themselves with outgroups in this country, as well as globally. Among these are RaceCrits, FemCrits, QueerCrits, ClassCrits and LatCrits. See Francisco Valdes, *Outsider Scholars, Legal Theory & OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831 (2000).

of times. The third decade, like the first two, appears set to become a complex challenge of turbulent, and potentially disorganizing, contradictions that put increasing suppressive pressure on justice-minded legacies, impulses or efforts in law, education and society.

Three phenomena, and their interaction, have helped to give shape to LatCrit projects and praxis: 1) the waging of “cultural warfare” against the social effects of the legal reforms emplaced during the New Deal, Great Society and second Reconstruction; 2) the specific targeting of universities, including law schools, and other “liberal” institutions, for this type of warfare; and, 3) most recently and specifically, the cry of “crisis” and the growing imposition of austerity in law schools under the imperatives of neoliberal reform. Internally, three other phenomena, and their interaction, likewise have given shape and direction to our work: 1) the advances and lessons of our jurisprudential precursors and legacies; 2) a focus on praxis in personal and collective terms grounded in common and mutual commitments; and 3) critical and self-critical attention to accumulating and expanding experience. Because these circumstances have largely defined the social, professional and institutional contexts from which we emerged, and in which we remain embedded, we begin with a brief synopsis of important highlights and key takeaways.

#### *A. In Context: LatCrit Theory, Community and Praxis @ XX*

In 1995, the LatCrit intervention was designed in substance and method to address several concerns in synergistic ways. For one thing, our efforts were committed to the inclusion of then-absent Latina/o voices in law and policy discourses and decisions.<sup>29</sup> But equally important, this work would not privilege any particular type or conception of “Latina/o”—nor view issues especially germane to Latina/o interests as stand-alone problems. Instead, we framed our efforts around coalitional and multidimensional analyses of multiply-diverse Latina/o populations situated within inter-group frameworks that foregrounded axes of differences both within and beyond Latina/os.<sup>30</sup> We aimed both to highlight Latina/o communities and diversities as

29. See Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (introducing the papers of the first LatCrit Conference).

30. For a deeper discussion, see Francisco Valdes, *Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) [hereinafter Valdes, *Theorizing “OutCrit” Theories*].

well as to help advance critical outsider networks and coalitional attitudes and knowledges.

Our overarching purpose therefore was to help put into motion forward-looking practices in critical and outsider knowledge production to broaden and deepen the scope of critical outsider scholarship as well as to help us all innovate knowledge-producing methods in organic, solidaristic and programmatic terms. Our original aims and priorities, in other words, centered both on Academy and society as diverse formations, and emphasized the interconnection of theory and action in relationship to multifaceted identities, law and justice. Our approach strove—and strives—to cultivate outsider community in the production of critical theory and in the promotion of coalitional praxis.

Thus, personal and community praxis—and coalitional anti-subordination praxis in particular—has been a recurrent theme in LatCrit ventures.<sup>31</sup> This emphasis on theory-practice connections pushes LatCrit work to link analysis to action, and action to analysis, in systematic and always-vigilant ways. And our emphasis on *coalitional* theory, community and praxis helps to ensure that we—each of us, individual and collectively—participate actively, knowingly and specifically in the justice struggles of those who we imagine are not us.<sup>32</sup>

This coalitional commitment quickly and repeatedly has entailed “productive tensions” generated from the many vectors of difference involved in this work.<sup>33</sup> Thus, as with other formations, we have encountered misunderstanding, conflict, and failure. As we have previously noted, this work can be and is messy.<sup>34</sup> Yet, our commitment to coalitional theory and praxis provided a common and forward-looking platform from which to negotiate those encounters. Each time, the LatCrit community has chosen to renew our shared labors. Today, therefore, we stand at this cusp of another decade, still facing forward, still in principled solidarity. Today, as in the 1990s, the LatCrit community remains embarked on the construction of a critical and self-critical experiment in outsider theory and coalitional action, both in personal and in programmatic terms.

31. See LATCRIT, *supra* note 13.

32. See Jerome McCristal Culp Jr., *Latinos, Blacks, Others and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997).

33. See Hernandez-Truyol, Harris & Valdes, *supra* note 2, at 278.

34. *Id.* at 279–82.

Like then, today we are committed to the functions of theory in every aspect of our individual and collaborative work.<sup>35</sup> Like then, we can and do remain anchored to the general guideposts that have informed our substantive efforts for the past two decades.<sup>36</sup> As always, we root ourselves and our collective work in common, mutual, and articulated commitments<sup>37</sup> and postulates.<sup>38</sup> Looking forward, our priorities and agendas aim, on these bases, to respond to the vexed social, legal and educational landscapes around us.

The broader socio-legal landscape has never looked good and today, as noted above, perhaps never before worse. LatCrit scholarship, like other genres of critical outsider jurisprudence, itself emerged in great measure from the diversification of the legal Academy, and certainly against the backdrop of increasing backlash in society at large.<sup>39</sup> This diversification, which had occasioned professional entry for historically unprecedented numbers of traditionally excluded groups based on race and gender, and later, other categories of historical exclusion, was one effect of “liberal” policy that reactionary backlash has sought, and still seeks, to undo.<sup>40</sup> This larger pattern of backlash, called a “holy war” in the 1970s and a “culture war” since the 1990s, was and is part and parcel of identity-inflected reactions to the social and legal reforms of the second Reconstruction and Great Society.<sup>41</sup> Within the legal Academy, this dynamic of anti-liberal reaction and identitarian backlash has zeroed in on critical legal studies generally, and on outsider varieties of legal criticalities even more so.<sup>42</sup>

For LatCritters, therefore, in 1995 the basic challenge was to build on the best that we could gather from the historical record up to that point. At that time, we were confronted with myriad choices, and we made ours. On the whole, our methodological choices were designed to

35. See Bender & Valdes, *supra* note 19, at 402–03.

36. *Id.* at 403–05.

37. *Id.* at 401–02.

38. *Id.* at 408–09.

39. Symposium, *Countering Kulturkampf Politics Through Critique and Justice Pedagogy*, 50 VILL. L. REV. 749 (2005).

40. See Francisco Valdes, *Culture, “Kulturkampf”, and Beyond: The Antidiscrimination Principle Under the Jurisprudence of Backlash*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 271 (Austin Sarat ed., 2003) (presenting an overview).

41. See Arthur R. Miller, *Of Frankenstein Monsters and Shining Knights: Myth, Reality, and the “Class Action Problem,”* 92 HARV. L. REV. 664 (1979) (critiquing the “holy war” against the then-recent innovation of class actions being used by consumers).

42. See Bender & Valdes, *supra* note 19, at 415–28.

apply and amplify our substantive commitments—within our personal and aggregate limitations.

Substantively, we pegged our programmatic work to two fundamentals. The first, anti-essentialism, committed us to the pursuit of equality and justice on grounds that transcend identity categories, or that prioritize among them. The second, anti-subordination, grounded our anti-essentialist approaches to equality issues and identity politics in a substantive coalitional commitment to lived justice for all. These twin commitments have shaped LatCrit praxis since then.

In general and historical terms, our commitment to anti-essentialism was pre-ordained by the logic of white supremacy in the United States as we found it at the dusk of the twentieth century. Our commitment to anti-subordination was a principled act of will—a shared choice based on express, mutual goals and values. To us, it was the joinder of the two that made each more powerful as potential instruments of equal justice under law.

Methodologically, we also were confronted with choices, and we made ours—again within our combined limitations. In particular, we searched for and forged methodologies that allowed us to practice, in personal as well as programmatic terms, our substantive commitments to anti-essentialist and anti-subordinationist analysis and action. These practices required us, for example, to “rotate centers” and to construct long-term “streams of programming” that ensured community interrogation of “different” structures of subordination, as well as their multifaceted interconnections.<sup>43</sup> This practice facilitated group progression and cohesion in the development of coalitional knowledge and understanding. These substantive and methodological commitments shared a fundamental and overarching purpose: to build theory and community, to inspire and facilitate solidarity in action, and to foster and support what we have come to call “academic activism.”<sup>44</sup>

The programmatic blending of these substantive commitments and group practices became the framework for LatCritical synergies of theory, community and praxis. And it was this framing, in turn, that distilled the interplay of the three—theory, community and praxis—in our work, both individual and collective. In time, we came to understand this blending as a kind of personal collective praxis, which in turn became a LatCrit characteristic. Over time, the community Portfo-

43. See Hernandez-Truyol, Harris & Valdes, *supra* note 2, at 269–72; Valdes, *Theorizing “OutCrit” Theories*, *supra* note 30, at 1302–05.

44. See Montoya & Valdes, *supra* note 15, at 231–35.

lio of Projects became the self-governed framework from and in which we did, and do, this personal collective work—a safe “zone” of year-round activities designed to foster coalitional ideas, relationships and projects that reflect the functions, guideposts and commitments that anchor our academic activism. This zone became the venue in which LatCrit praxis unfolded to generate both community and theory.

For this reason, it bears emphasis that our work organically and programmatically has *combined* anti-essentialism with anti-subordination. Never have we seen the two as separate, or severable, in action. As coalitional praxis, each makes sense only in tandem with the other.

For us, then, the point of anti-essentialist identity politics has been to transcend the conventional social meanings of common identity constructs that prop up supremacist arrangements, norms and systems. In other words, our goal has been to promote our individual and communal capacity to appreciate and embrace difference, to foster normative spaces for the expression of individuated idiosyncrasies that straddle or scramble conventional identity indicia, to help engender multidimensionally an egalitarian social order of personal liberty and communal liberation for all—and especially for historically subordinated groups. For these reasons, anti-essentialism *must* be tethered to anti-subordination, and vice versa, in critical and self-critical ways.

This coalitional work, even with its many imperfections and limitations, incrementally has helped to grow critical outsider scholarship as well as critical outsider networks since the 1990s. Although limited always by our frailties and incapacities,<sup>45</sup> our collective and cumulative exertions have posted discernible gains that make a difference, and that endure, in material terms. For one thing, as discussed below, Out-Critical networks are more extensive than ever: during the past few years, for instance, critical outsider networks have sponsored more conferences and similar academic events than ever.<sup>46</sup> Moreover, today we see in the legal Academy more faculty of color than ever in positions of significant, albeit structurally limited, influence.<sup>47</sup> Across the

45. Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. SOC. JUST. 131 (2009) (summarizing both gains and shortfalls).

46. See Francisco Valdes, *Coming Up: New Foundations in LatCrit Theory, Community, and Praxis*, 48 CAL. W. L. REV. 505 (2012) [hereinafter Valdes, *Coming Up*] (outlining the strategic planning process and second-decade initiatives).

47. For further reflections on these developments, see LeRoy Pernell, *Reflecting on the Dream of the Marathon Man: Black Dean Longevity and Its Impact on Opportunity and Diversity*, 38

legal Academy, our work remains marginalized, but it also has continued to mature, and to become more institutionalized as well as democratized.

Perhaps most notable, or emblematic, of this ongoing evolution is the emergence and cohesion of ClassCrits as an organized formation within OutCrit legal studies.<sup>48</sup> Designed to help redress one of the most enduring, perplexing and consequential gaps in anti-subordination consciousness or practice within the United States, this formation focuses on the interplay of law and socio-economic stratification, and on the interaction of socio-economics with other axes of identity, like race, gender, disability or sexual orientation. As the most recent genre of critical outsider jurisprudence, ClassCrit scholars, as a group, have enjoyed the greatest availability of previous jurisprudential experience for adaptation and application. Exemplifying the best we can hope for, and as discussed in further detail below, they also have shown the wisdom and will to do so. As the ClassCrit record already shows, these efforts both reflect and go beyond the LatCrit example.

At the same time as we see OutCrit ranks and infrastructure thicken, we see more retrenchment, inequality, hostility and austerity than ever before. We see that, even though we have made some progress both within the Academy and across society, our very progress—even though limited—has helped to trigger fierce backlash designed to contain, if not retrench, our fragile gains.<sup>49</sup> Increasingly, we see intensifying challenges and contradictions. Most recently, and in addition to the ongoing dynamics of backlash, “crisis” has begun to define the current context of legal academia.

In particular, we increasingly can begin to discern how retrenchment, hostility and austerity are interlocking in synergistic ways to smother our efforts as part of the larger equality take-backs under way: with the cry of crisis increasingly in the air, our fragile OutCritical

U. TOL. L. REV. 571 (2007); Kellye Y. Testy, *Best Practices for Hiring and Retaining A Diverse Law Faculty*, 96 IOWA L. REV. 1707 (2011).

48. See Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859 (2008) [hereinafter Mutua, *Introducing ClassCrits*] (providing an overview of ClassCrits).

49. See, e.g., Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1995–1996); Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 331–87 (1988); Kenneth L. Karst, *Religion, Sex, and Politics: Cultural Counterrevolution in Constitutional Perspective*, 24 U.C. DAVIS L. REV. 677 (1991); Francisco Valdes, *Culture by Law: Backlash as Jurisprudence*, 50 VILL. L. REV. 1135 (2005).

institutions may be among the first targets of opportunity.<sup>50</sup> Austerity, of course, does not strike all alike. The institutional hysteria of crisis, alas, provides the context for making existing contradictions even more acute for LatCrit and OutCrit interventions in law, education and society.

Thus, the past two years have witnessed a growing cascade of pronouncements on the impending or unfolding demise of legal education specifically, and higher education generally, despite a lack of consensus on the nature, cause or reality of the predicament, and despite the recurrence of moments like this one in the relatively brief history of the U.S. legal Academy.<sup>51</sup> Whatever the “true” state of affairs might be, “crisis” undeniably is the context of the moment in U.S. legal academia.<sup>52</sup> The only real question is which oxen—and whose—shall be gored in the immediate excitement of it all.

These observations are not confined to outsider or critical quarters. For instance, in his incoming message to the U.S. legal professorate as a whole, incoming President of the American Association of Law Schools (AALS), Dan Rodriguez, questions pushes for “practice readiness” that, in today’s context, oftentimes are part of the construction of “crisis.”<sup>53</sup> Questioning the very meaning of practice “readiness” in a moment of widespread professional flux, he advocates a “coherent approach to professionalism that prepares students to further the interests of their clients, to advocate zealously and responsibly, and to promote justice and the rule of law in a world which expects lawyers to do exactly that and to do it capably and resourcefully.”<sup>54</sup> From a more explicitly OutCrit perspective, we would summarize: rather than produce more highly-indebted corporate servants, law schools must remember in this moment of crisis and “reform” that our mission is to teach students how to engineer justice in the context of a specific client or matter as a legal professional with a high degree of integrity. From a

50. As of this writing, in Spring 2015, the information remains anecdotal, as we hear increasing numbers of reports of centers, programs, institutes, clinics, positions and other resources established to serve marginalized communities which are now being subjected to front-line cutbacks while others remain untouched.

51. The history of formal legal education in the United States is pocked with flux, change and crisis. See generally ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850’S TO THE 1980’S* (1983).

52. For a sampling of the literature, see Carrie Menkel-Meadow, *Crisis in the Legal Education or the Other Things Law Students should be Learning and Doing*, 45 *MCGEORGE L. REV.* 133 (2013).

53. Daniel B. Rodriguez, *Assumptions of Risk*, AALS NEWS, Nov. 2014, at 1.

54. *Id.* at 2.



LatCrit-OutCrit perspective, crisis and reform should be occasions for accentuating law and lawyering as means, and justice as the end.

Nonetheless, in the fog of this current hysteria, one significant fact has now begun to emerge: this sense of immediate and even biblical crisis has slowly but surely begun to license the radical reallocation of resources in law schools from coast to coast.<sup>55</sup> Mounting reports of faculty cutbacks ranging from support for scholarship to basic compensation and tenure itself have become almost commonplace.<sup>56</sup> Today, it has become a near verity that every law school is under intensifying compulsion to rethink its “business model”—and, *sub silentio*, in ways that increasingly undermine the justice-minded roles and functions of legal education in a democratic society. Today, as all across the American landscape, the intellectual independence and institutional integrity of legal education is under assault as democracy itself is threatened with capture and dismantlement.

This macro-context, as noted earlier, oftentimes is called a culture war, and it certainly has established the defining zeitgeist for the emergence and development of critical outsider jurisprudence generally, and of LatCrit specifically.<sup>57</sup> This fierce reactionary contestation over the equality gains of the mid-twentieth century not only precedes us, but it also has dominated the external conditions for the unfolding of our labors. Driven by traditional identitarian ideologies of subordination and privilege—racism, sexism, homophobia—this backlash additionally demands and imposes an ideologically-inflected regime of economic austerity—neoliberalism—that helps to further explain and

55. For a sense of the flux, see *Educators Debate: Are Law Schools in Crisis?*, NAT'L L. J. (Nov. 7, 2011), <http://www.nationallawjournal.com/id=1202524763160/Educators-debate-Are-law-schools-in-crisis?slreturn=20150111010103>; Jay Conison, *Dean's Desk: A New Curriculum at Valparaiso Law School*, IND. LAW. (Feb. 13, 2013), <http://www.theindianalawyer.com/deans-desk-a-new-curriculum-at-valparaiso-law-school/PARAMS/article/30731>; Jennifer Gerarda Brown, *A New Campus and Deeper Partnerships; Quinnipiac Law School Accelerates Transition to Real-World Orientation*, CONN. L. TRIB., Dec. 30, 2013, at 14; Matt Leitcher, *Changes to Law School Standards Eliminate Waste*, AM. LAW. (Sept. 30, 2014), <http://www.americanlawyer.com/id=1202671264181/Changes-to-Law-School-Standards-Eliminate-Waste?slreturn=20150111010005>.

56. For a selective sampling, see Elizabeth Crisp, *LSU Law Center Offers Buyouts to 7 Professors as Interest in Law Schools Dwindles Nationally*, ADVOCATE, Jan. 22, 2015, <http://theadvocate.com/news/11137666-123/law-center-plans-buyouts>; Belinda Thurston, *Cooley 'Right-Sizing'*, CITY PULSE, Aug. 15, 2014, <http://www.lansingcitypulse.com/lansing/article-10487-cooley-right-sizing.html>; Peter Schworm, *Suffolk Abruptly Replaces President*, BOS. GLOBE, Aug. 28, 2014, at A1; see TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS'N, REPORT AND RECOMMENDATIONS 20, 31 (Jan. 2014), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf).

57. See *supra* text and sources at notes 39–42 and 49.

contextualize the contradictions and challenges facing LatCrit-OutCrit networks in this precise historical moment. The ominous construction of crisis and austerity within legal education in recent years may prove to be the latest twist in this ongoing war against equal justice itself.

Note that neoliberalism is a reorganization of capitalism where hegemony of finance capital displaces Keynesian welfare.<sup>58</sup> This transformation entails a roll-back of the welfare state, breaking the power of organized labor, precarization of labor markets, financialization of the economy, and exponential expansion of debt. In this ensemble, debt sustains aggregate demand, fuels liquidity to lubricate financialization, and facilitates assemblage of entrepreneurial subjects responsible for their own economic security. Public welfare is replaced by self-care, and working classes are obliged to fund their private welfare through private debt, while calibrating their conduct with demands of a precarious labor market.

The score-card of distribution of gains and costs of neoliberalism testifies to its success as a strategy of the wealth-owning classes. The rate of profit, which was 7.8 percent in 1952–1971, and fell to 6.4 percent during the 1970s, rose to 8.3 between 1995–2005.<sup>59</sup> The share of total income received by the top 1 percent of the income bracket rose from 9 percent in 1980 to 23 percent in 2007.<sup>60</sup> After three decades of neoliberalism, the average person earns less per hour worked.<sup>61</sup> Incomes of the bottom 90 percent fell by 9 percent, while incomes for the top 1 percent increased by 101 percent, and those of the top 0.1 percent rose 227 percent.<sup>62</sup> Neoliberalism unleashed a war on organized labor; indeed it “recast the crimes of union busting as acts of patriotism.”<sup>63</sup> The end result is the near collapse of American unions.<sup>64</sup> In the

58. For discussions of the genesis and nature of neoliberalism, see generally SAMIR AMIN, *THE LIBERAL VIRUS: PERMANENT WAR AND THE AMERICANIZATION OF THE WORLD* (James H. Membrez trans., 2004); GÉRARD DUMÉNIL & DOMINIQUE LÉVY, *THE CRISIS OF NEOLIBERALISM* 7–10 (2011); DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 19 (2005); NEOLIBERALISM: A CRITICAL READER 32 (Alfredo Saad-Filho & Deborah Johnston eds., 2005); JAMIE PECK, *CONSTRUCTIONS OF NEOLIBERAL REASON* (2010); MICHAEL PERELMAN, *RAILROADING ECONOMICS: THE CREATION OF THE FREE MARKET MYTHOLOGY* (2006); RAYMOND PLANT, *THE NEO-LIBERAL STATE* (2009); *THE RISE AND FALL OF NEOLIBERALISM: THE COLLAPSE OF AN ECONOMIC ORDER?* (Kean Birch & Vlad Mykhnenko eds., 2010).

59. DUMÉNIL & LÉVY, *supra* note 58, at figs.4.1, 59 (2011).

60. *Id.* at 46 fig.3.1.

61. WILLIAM BONNER & ADDISON WIGGIN, *THE NEW EMPIRE OF DEBT: THE RISE AND FALL OF THE EPIC FINANCIAL BUBBLE* 203 (2009).

62. David McNally, *From Financial Crisis to World-Slump: Accumulation, Financialization, and the Global Crisis*, 2009 *HISTORICAL MATERIALISM* 35, 60.

63. MARTIN JAY LEVITT & TERRY CONROW, *CONFESSIONS OF A UNION BUSTER* 217 (1993).

64. JACOB S. HACKER & PAUL PIERSON, *WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER—AND TURNED ITS BACK ON THE MIDDLE CLASS* 56 (2010).

private sector union membership rate fell from 25 percent in 1975 to 6.9 percent in 2010<sup>65</sup>—the lowest level since 1901.<sup>66</sup> Wages were directly impacted by the decline of unions. In 2007, the union wage premium was 14.1 percent; 17.1 percent for men, and 10.7 percent for women.<sup>67</sup> Racial minorities were particularly hard hit by the decline of unions because the union wage premium is significantly larger for them; 17.4 percent for Asians, 18.3 percent for Blacks, 21.9 percent for Hispanics, and 12.4 percent for Whites.<sup>68</sup> The decline of unions was accompanied by a 29.9 percent decline in minimum wage's value between 1979 and 1989. Even after subsequent legislated raises, minimum wage was 6.8 percent less in 2009 than its peak value in the late 1960s.<sup>69</sup> Furthermore, between 1989 and 2000, annual working hours for the bottom fifth of wage earners increased by 7.3 percent, while those for the top fifth decreased by 0.5 percent.<sup>70</sup> Average yearly hours worked for all workers increased from 1703 hours in 1979 to 1883 hours in 2006.<sup>71</sup>

In short, recent and ongoing structural changes in education, including in legal education, that seemingly require redesigned operating models are creating exploitative opportunities—for example, the imposition of ideologically selective austerity—that intensify the existing pressures of the culture wars. Generally across the land, the new crisis seems not to threaten the institutional position of traditional, or business-oriented, programs designed to make students professedly “practice ready”—a thoughtless and untenable reductionism that overlooks, if not erases, the traditional and core commitment of law to justice. Instead, “crisis” is a ready-made context ready to be institutionally and politically exploited to cut back selectively, specifically and strategically on justice-inflected, and especially identity-inflected, studies.

For this very reason, as the LatCrit community already has begun to experience substantially, the politics of “crisis” now provides a context for new opportunities to squeeze civil rights commitments, both in curricular and in faculty terms. As the skewing and squeezing of priorities increasingly benefit some at the expense of others, legal criticalities tend to come out with the short end of these sticks. Under these

65. *Id.*

66. STEVEN GREENHOUSE, *THE BIG SQUEEZE: TOUGH TIMES FOR THE AMERICAN WORKER* 243 (2008).

67. LAWRENCE MISHLE ET AL., *THE STATE OF WORKING AMERICA 2008/2009* 201 tbl.3.32 (2009).

68. *Id.*

69. *Id.* 209, 208–211 figs.3AA, 3AB & tbl.3.38.

70. *Id.* at 47 tbl.1.2.

71. *Id.* at 128 tbl.3.2.

conditions, longer-term self-sustainability must become an immediate LatCrit-OutCrit priority.

These recent and growing “external” changes in our institutional and professional environments necessarily require LatCrit and OutCrit scholars to reimagine and re-invent ourselves “internally”—at a minimum, to be proactive in adapting to the new conditions and finding within them new opportunities for principled work. Even as the institutional and fiscal lifelines for some of our programmatic practices shrink or disappear, we must search for and even create new ways and means to carry on. As we have known from the outset, this work will transcend the time or work of any one generation.<sup>72</sup> For this reason, and again within our limitations, we have worked during these past two decades to build an internal infrastructure for the longer term.

Consequently, within the OutCrit network of networks, we have a better and richer infrastructure than ever before. Yet the pregnant question centers increasingly on the shifting conditions of sustainability. More directly, the question centers on our coalitional capacity for self-sustainability during these times of growing, and ideologically selective, austerity. Coming full circle, this bottom line provides context and focus for the general transitions, programmatic evolutions and structural dislocations that frame this historical moment for LatCrit and OutCrit praxis.

To transcend reactionary backlash during these challenging times, and specifically the most recent imposition of neoliberal austerity under the rubric of crisis, LatCrit and OutCrit networks must focus with similarly increasing intensity on building collective capacities in knowledge production and self-reproduction for the long run. Even if the moment is overrun with the politics of backlash, our critical sights must be set on a steady development of enduring independence and autonomy. As always, we must look beyond the volatile exigencies of the moment to help ensure continuity and flexibility to our work in substantive, programmatic, institutional terms. We must learn from the past and present to fashion next steps and new foundations, both personally and communally. The challenges of crisis and contradiction that lie ahead require us to re-learn how to continue our growth as a coalitional community of multiply-diverse individuals even as we face increasing conditions of institutional starvation. This bottom line is the challenge of today’s context: we must find new ways and means of car-

72. See Bell, *supra* note 11 (on racial realism).

rying on with existing work, as well as to launch new innovations and initiatives.

This bottom line compels LatCrit-OutCrit attention and action broadly on two tracks of personal and collective work concurrently: 1) classes, or the curriculum, and 2) people, or the faculty. Both, obviously, are required to sustain justice education within the traditional confines of a formal legal education. One cannot exist or prosper without the other. And the preservation of both thus is the existential challenge facing the LatCrit community specifically as we proceed with generational transitions, programmatic evolutions and structural dislocations at the cusp of this third decade. This end point illustrates why LatCrit—and OutCrit—recognition of legal education's centrality to our work is so crucial; this bottom line underscores why legal education always must be a key front of LatCritical praxis.

In this current context, our task is to discover opportunity in crisis—opportunities to advance justice studies and praxis despite the larger reactionary zeitgeist. Our task is to re-assert justice as the grounding for law—the pre-eminent legal value expressed in constitutive and authoritative texts ranging from the Declaration of Independence, to the Constitution, to the Rules of Procedure, and the singular vow carved into the portico of the U.S. Supreme Court. In the same ways that we discovered how to build an infrastructure for the incubation of LatCrit-OutCrit theory, community and praxis during the first two decades in the midst of cultural war, we must now do the same under the politics of crisis and neoliberal austerity that envelop us, adding a special emphatic reminder about the foundational role of justice in law. While the external situation may be in extreme flux, our internal sense of substantive purpose must, and does, remain constant and solid.

These forward-looking challenges thereby also bring into sharp relief the interactive relationship of these ongoing or impending transitions, evolutions and dislocations. It is precisely because the neoliberalized politics of crisis and austerity threaten our work in curricular and faculty terms that LatCrit scholars must prioritize more so than ever before our emphasis on inter-generational transitions—transitions designed in turn to foster programmatic evolutions that exploit structural dislocations for a third decade of principled praxis.

More than ever, we must be prepared to act as guerilla scholars,<sup>73</sup> fighting from below and from the margins for a future better than the status quo promises, not only to sustain our zone of safety but also to grow our mentoring efforts and continue to expand our ranks. As Out-Critical pioneers long have pointed out, and we can only underscore here, the future may depend on manifold and coalitional efforts to pipeline and incubate what we want.<sup>74</sup>

Importantly, this commitment to intergenerational transitioning and programmatic evolution in the context of structural dislocation is a conscious community choice taken during our recent Self-Study and Strategic Planning process.<sup>75</sup> Spanning several years from 2008 to 2011, this two-part undertaking entailed a self-critical examination both of the circumstances internal to OutCrit work, as well as external to it.<sup>76</sup> As a result, the LatCrit community reconfigured its community projects, launched several new foundational initiatives, and put into place generational transitions both across the Project Teams as well as the Board.<sup>77</sup> The conclusions of those efforts have been guiding our follow-ups since then, as reflected in the discussion below, regarding both our Portfolio of Projects and our internal self-governance as a jurisprudential community.

A decade from today the politics of crisis and furies of backlash may have dissipated, both in society and Academy, and perhaps the march toward a transformative reconstruction of the social order under just law may have resumed, however fitfully. From where we stand today, we cannot know how external forces will act, nor how events ultimately will unfold. For now, our task and challenge is to renew and reinvent the internal fundamentals of our principled collaborations and critical coalitions. Whether or not these exertions ultimately make a difference, our task and challenge is to ensure they do as best as we possibly can.

73. For uses of this concept, see Paul Harris, *Guerilla Lawyering*, 3 SEATTLE J. SOC. J. 561 (2005); Christine Zuni Cruz, *Shadow War Scholarship, Indigenous Legal Tradition, and Modern Law in Indian Country*, 47 WASHBURN L.J. 631 (2008).

74. GERALD P. LOPEZ, *REBELLIOUS LAWYERING* 382 (1992).

75. See Valdes, *Coming Up*, *supra* note 46, at 523–25.

76. *Id.* at 526–36.

77. As a result, today most project teams, as well as Board projects, are spearheaded by newer-generation folks, including the conferences, the SSP, the SNX, the website and similar programmatic commitments.

In sum, as we stand at the cusp of a third decade, the challenges, connections, commitments and contradictions that have framed our work substantively and methodologically remain the same in some key and basic ways. But much also has changed. Both internally and externally, the situation is both much the same and yet vastly different. The specifics have morphed even as the politics have hardened. Since 1995, the social and legal circumstances that gave rise to the LatCrit experiment in critical outsider jurisprudence have become more pronounced in ever-more complicated ways. Even now, the challenges to LatCrit and OutCrit praxis posed by today's increasingly complex contradictions in law, education and society grow as they call for renewed and reimagined critical alacrity.

*B. Critical Alacrity: The Portfolio of Projects and Internal Self-Governance*

As noted, the LatCrit experiment in critical outsider jurisprudence was embedded in, and emerged from, U.S. legal academia. Our first programmatic efforts, therefore, were typical of academia: colloquia, conferences, workshops. But, as already noted we were using very particular substantive anchors and programmatic methods to give shape, form and content to these otherwise typical academic activities.

Our programmatic methods or choices—like rotating centers and streaming programing—were designed to practice, or to perform, our coalitional combination of anti-essentialism and anti-subordination. Thus, a review of conference themes and programs reveals the LatCrit purview to be both deep and wide. Our programmatic efforts, as we eventually came to understand them, were designed both to advance and to democratize the process of legal knowledge production as a collective, coalitional enterprise through the engagement of difficult dynamics related to difference.<sup>78</sup>

In variegated ways, our efforts contributed incrementally to the continuing construction of non-traditional knowledge-production models in the legal Academy, and in contrast to historically dominant premises and practices that valorized atomized labors that controlled professional status in ways that, in turn, intellectually checked courage in the name of "quality" or "standards" and merit.<sup>79</sup> Rejecting the use of

78. See Valdes, *Theorizing "OutCrit" Theories*, *supra* note 30, at 1306–21.

79. For a summary of the historical background, see Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449 (1997).

status-building and status-destroying norms and practices as instruments of professional discipline, our democratizing choices began to provide safe harbor for numerous scholars likewise seeking to work free of the “star-system” politics pervasive in legal education.<sup>80</sup> Although LatCrit I in 1996 brought together about 65 participants, the LatCrit Annual Conference was bringing together nearly 300 scholars just over a decade later.<sup>81</sup> The need, at least in those times, for this type of programmatic intervention was more than clear.

Initially, the LatCrit conference programs were organized as plenary events by a planning committee—as was, and oftentimes still is, typical in academic settings. Gradually, however, the planning process, as described below, became steadily more open or democratic, with concurrent panels created organically by community members becoming the better part of the overall program. Each year we built on the increments of the previous one(s). Step by step, we tried to learn from accumulating experience to theorize next moves and guide longer-term trajectories. From year to year, we applied theory to action, and action to theory. Each was different than previous one(s), but in substantively consistent and critically theorized details. By the start of our second decade, the Annual LatCrit Conference had evolved fully into an organic expression of the community at that particular moment in our history: the fluid yet cohesive LatCrit experiment in democratic knowledge production had taken form.<sup>82</sup>

Moreover, much of the same could be said for our efforts to organize ourselves as a self-governing community, even if multiply diverse and far flung. From the beginning, therefore, internal self-governance became another arena for the performance or practice of the theory, and for the use of experience to theorize next steps.<sup>83</sup> These early efforts in principled programmatic development and autonomous self-governance soon led to the next series of collaborative initiatives designed to build on the functions, commitments and guideposts underlying our sense of critical, coalitional community.

Based on our articulated commitments and shared understandings, we soon established a five-year cycle of annual conferences designed to ensure continuity as well as progression across multiple

80. See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984) (naming and initially mapping the “imperial” tradition).

81. See Bender & Valdes, *supra* note 19, at 398.

82. See Hernandez-Truyol, Harris & Valdes, *supra* note 2, at 268–82.

83. See Montoya & Valdes, *supra* note 15, at 231–47.



planes of collective concerns or priorities. This forward-looking decision alleviated the need of each year's planners to begin the process anew—a not atypical situation then—and instead created a series of staggered planning groups that focused on different years but kept an eye on each other's work to create or exploit synergies both in substance and in method. This initial decision was designed to help secure the programmatic sustainability of the first decade<sup>84</sup>—and to help ensure that each year's planning process would take place consciously as part of a larger community project in coalitional knowledge-production and collective capacity-building.

During those same early years, we also formalized our incorporation as a nonprofit entity—a decision made in tandem with the five-year planning cycle and driven by the same basic purposes: self-sustainability. Incorporation not only allowed us to construct an infrastructure for internal self-governance from year to year, and from generation to generation, but also allowed us to build an ongoing, autonomous community treasury.<sup>85</sup> This early decision—atypical of jurisprudential formations at the time—was designed to secure the conditions for long-term praxis in substantively principled terms. The formal incorporation of “LatCrit” thus helped to establish some of the basic conditions of collective independence for the inter-generational transitions underway today.

Finally, during that same time, we began to develop our early programmatic activities into what we now call the community Portfolio of Projects. After the initial Puerto Rico colloquium and early LatCrit annual conferences, we organized a Student Scholar Program (SSP) dedicated to pipelining current law students into legal academia, and a Faculty Development Workshop (FDW) designed to provide support for newly entering members of the Academy, especially those of color, and especially those committed to legal criticality. These projects additionally put on display our keen attention to the Academy itself as a site of contested power and in/justice. In addition to these initiatives,

84. See *supra* text and sources at notes 1–3.

85. During the 1990s, most outsider academic events were funded as one-time, stand-alone commitments, which required each year's planning group to start fundraising from scratch. One important exception was the Southeast-Southwest People of Color Scholarship Conference, which from its early days transferred surpluses forward from account to account for use by the planners of the following conference, along with their own additional fundraising. The LatCrit move to a permanent and independent community treasury took these practices to the next level, allowing for better long-term financial planning and helping to ensure continuity and stability even during temporary interruptions of funding. This condition of stability and autonomy is what has been put at stake by the politics of austerity and crisis noted and questioned here.

we also reached beyond the borders of the United States as well as of Law to engage transnational, cross-disciplinary issues through initiatives like the Critical Global Classroom (CGC), the International and Comparative Law Colloquium (ICC), the South-North Exchange on Theory Culture and Law, and, more recently, the Studies Space Series.<sup>86</sup> In addition to these recurring programmatic events, we established other projects like the NGO accreditation with the United Nations, amicus briefs in strategic litigation, workshops geared to students and other folks, and publications in law reviews as well as through our website.<sup>87</sup> Rooted in the functions, commitments and guideposts that helped to cohere our early work, this array or “portfolio” of recurrent, year-round programmatic events and related publications became the “zone” of OutCritical safety in which we now work to produce knowledge, promote equal justice, and incubate future generations of anti-subordination academic activists.

This safe zone, constituted by our Portfolio of Projects and related programs since the 1990s, has brought together different folks over fifty times in varied locations ranging from Capetown in southern South Africa to Seattle in the northwest corner of the United States.<sup>88</sup> Over the past two decades, these programs and projects have yielded more than forty publications, most in the form of law review symposia much like this one, and most appearing in reviews of color, or dedicated to social justice studies.<sup>89</sup> As the LatCrit Research Toolkit demonstrates, over 1000 authors from around the globe and working in multiple disciplines have participated in, or contributed to, these programmatic efforts and publications.<sup>90</sup> As the Key Word Index and Thematic Index accompanying the Toolkit demonstrate, their work has helped to keep critical outsider jurisprudence specifically, and justice studies generally, on the move during these past two decades.<sup>91</sup> As is appropriate to a coalitional enterprise devoted to rotating centers, these programs and publications cover a wide swath of socio-legal terrain documenting and unpacking systemic linkages of law, identity

86. See *id.*; *The LatCrit Portfolio of Projects: 2012–2013*, *supra* note 14.

87. *Id.*

88. See Valdes, *supra* note 4 (Charts A–D).

89. See LATCRIT, *supra* note 13.

90. *Id.*

91. *Id.* The depth and breadth of the scholarship reflected in the twenty-five Themes and 250+ Key Words that make up the Research Toolkit indicate the contributions of those 1000+ authors who have published these works in the forty-some LatCrit symposia of the past two decades.

and injustice. As one whole, this body of work reflects the abiding LatCrit commitment to multidimensional analysis in the service of coalitional anti-subordination action in law, education and society.

Cumulatively, the individual and communal labor represented by this record and corpus has helped to keep critical outsider studies programmatically, intellectually and discursively vital in the U.S. legal Academy during these leaner years. Despite backlash and, now, austerity, these more than fifty program events have provided many cross-roads for professional growth, maturation and networking, as well as for professional development and advancement. Covering a range of issues and topics defying conventional categorization, the resulting scholarship provides multiple snapshots of the LatCrit community and allies at different points in time, as does this Symposium now. On the whole, this record of praxis and body of work have helped to maintain and expand a solidaristic community of academic activists diverse in many ways and diffused all over the hemisphere and world, but kept coherent by mutual commitments to common principles, practices and goals.

Mounting these increasingly complex programmatic efforts and related series of publications from year to year, and decade to decade, of course is no mean feat. Unsurprisingly, therefore, as these programmatic activities branched out during the first decade, so did our need for collective self-governance. Gradually and organically, we began to create a communal infrastructure of self-governance for programmatic and fiscal autonomy—a coalitional “zone” of year-round safety—for “personal collective praxis” as anti-subordination “academic activism” on anti-essentialist terms. The LatCrit formula for theory, community and praxis thereby congealed as the first decade unfolded.

Starting with two Co-Chairs, we moved to three, and then to a “Consejo,” or a Steering Committee, of five to seven members, each designed for its time, to help channel our institutional efforts throughout each year, and from year to year.<sup>92</sup> To conduct project activities, we created Projects Teams of self-selected participants, each working autonomously but in coordination with the rest. We also constituted a Board of Directors, multiply diverse across many vectors, in order to

92. For a presentation and discussion of these efforts, see Marc-Tizoc González, Yanira Reyes-Gil & Belkys Torres, *Change and Continuity: An Introduction to the LatCrit Taskforce Recommendations*, 8 SEATTLE J. SOC. JUST. 303 (2009); see also Marc-Tizoc González, Yanira Reyes, Belkys Torres & Charles R. Venator-Santiago, *The LatCrit Task Force Recommendations: Findings and Recommendations of a Self-Study of the LatCrit Board, 2009*, 18 AM. U. J. GENDER SOC. POL’Y & L. 853 (2010).

ensure the practice of anti-essentialism and anti-subordination in every respect.

Along the way, we periodically encountered the tensions that come with difference, and each time we renewed our commitment to fundamental choices. Whether in failure or in success, each step since 1995 steadily has rendered our programmatic efforts more and more “democratic” in nature at every level of self-governance: the Board of Directors grew in size and diversity, the Project Teams included students and rising generations of faculty, and our programs, publications and other activities increasingly brought together scholars and scholarship from across many lines of difference. Each step and effort has given shape and content to this evolving form of coalitional academic democracy.

And, importantly for this Symposium, throughout this time we likewise have endeavored to showcase rising generations of critical outsider scholars, both programmatically and otherwise.<sup>93</sup> It is no coincidence that the SSP has helped to pipeline seven current tenure-track law professors into the Academy—an advance secured from the margins of power that attests both to individual capacity and to community commitment.<sup>94</sup> From inception, we have looked to the longer run in practical and embodied as well as in theoretical terms.

Because our collective work remains anchored in the substantive commitments we have shared from the outset, our ongoing efforts also have remained flexibly guided by the continuing accumulation of experience and the perpetual shifting of circumstance. Indeed, this continual effort to balance continuity and flexibility has informed every LatCrit choice in method and in substance since 1995: even as we have striven to be nimble, we have insisted on remaining grounded in considered communal choices. Despite our stumbles and limitations, we continually have chosen to stay grounded in the coalitional solidarity of mutual goals and values.

Over time, and through many organic zigs, zags and productive tensions, we came to realize that our particular model of critical outsider jurisprudence stood discernibly amongst others. We came to understand more fully that our choices—our efforts to learn from the past and adjust the lessons to the present—had gradually given rise to a particular approach in OutCrit legal studies. Today, our LatCrit exper-

93. See Montoya & Valdes, *supra* note 15, at 242.

94. See LATCRIT, *supra* note 13.

iment in “democratic” knowledge production continues to evolve according to principle as well as to circumstance.

As reflected in our Strategic Plan, these ongoing efforts have led us to reorganize our community activities into three “baskets” of projects that reflect some of the key substantive or operational similarities (or differences) amongst them.<sup>95</sup> The first basket, including the conferences, the SSP, and the FDW, are geared mostly to law audiences in the global North. The second basket in our current Portfolio of Projects, including the CGC, ICC, SNX and Study Space, focuses on cross-disciplinary and transnational issues, especially those in the global South. The third basket comprises our publication efforts, including our website. In addition, and as discussed in more detail further below, we have two new community initiatives that exemplify, and carry forward, these varied types of programmatic efforts—and which were designed and launched with today’s precarious conditions in mind.<sup>96</sup>

In other words, the LatCrit community and related OutCrit networks continue to operate today as an academic democracy committed to anti-subordination academic activism in anti-essentialist terms, which is why particular programs or events in our three baskets of activities also continue to “mix and match” aspects of other academic models.<sup>97</sup> Today, as before, the Portfolio of Projects continues to be administered by multiply diverse Project Teams and a Board of Directors, and both levels of self-governance additionally reflect our commitment to intergenerational transitions. Indeed, as we proceed with these transitions, most of the community projects, as well as the Board itself, already are spearheaded by rising generations of OutCrit scholars committed to the same values and goals that have shaped LatCrit theory, community and praxis during the past two decades.

However, perhaps most gravely, today’s and tomorrow’s LatCritters will need to serially reinvent our approaches to self-sustainability like never before. As the conditions of retrenchment and politics of crisis combine in ever-more toxic ways specifically for justice studies and projects, we will need to step up our historical commitment to flexibility and nimbleness. As discussed throughout this forward-looking review, the LatCrit community will need to become better in funding, managing and advancing the existing Portfolio of Projects and recent initiatives, not to mention new undertakings, to meet the

95. See Valdes, *Coming Up*, *supra* note 46, at 532.

96. See *infra* Part I.C.

97. See text and sources at *supra* note 92.

morphing challenges of backlash, crisis and austerity in enduring terms.

While this concern over long-term self-sustainability (and autonomy) was original to the LatCrit experiment, and also was a key part of our most recent Self-Study and Strategic Planning process, the contemporary context of ongoing “crisis” is systemic and, for us, beyond effective control. In this macro-context, as noted earlier, the self-sustainability of outsider and critical networks, fiscal and otherwise, must fast become a front-burner priority for LatCrit and OutCrit praxis. In this political and systemic context, increased virtual capacities that minimize the costs and logistics of currently embodied practices but maximize their benefits must likewise become a quick collective priority for LatCrit-OutCrit formations.

Looking and leaning forward, LatCrit and allied networks must never forget historical fundamentals, or current circumstances, that define U.S. law, education and society. Even though the mainstream Academy never has welcomed legal criticalities, the current and tightening conditions of structural neoliberalism, cultural warfare and professional crisis now affirmatively threaten to erode, or overwhelm, the LatCrit-OutCrit gains of the past two or more decades. At a minimum, this dangerous combination of macro-forces threatens to narrow the horizons of our future work. Over time, these socio-legal conditions could suffocate justice-minded criticalities of all sorts and stripes. The challenge literally could be existential, especially if LatCrit and allied networks fail to stir, proactively and ethically, to transcend the mounting dangers and heightened contradictions driving the politics of crisis and austerity.

In short, the key challenges are clear, even if the whole landscape is less so. Even as we proceed with our deliberative choices, we must prepare to act ever-more nimbly, and coalitionally, during a third decade of LatCrit theory, community and praxis. We must continue to act both ethically and opportunistically to stay grounded as well as effective. We must keep our programmatic activities flexible yet based on the functions, guideposts, principles and postulates of the first two decades.

We must, in short, adapt individually and institutionally to a time of extended vulnerability and intense flux. We must begin now to imagine and recreate the conditions to conduce our own stability and vitality in lasting terms even as we struggle to maintain fragile recent gains. More concretely, current and future generations must be ready to re-

invent existing projects, governance and finances creatively, according to rapidly changing circumstances. We must continue to experiment critically and self-critically in principled, programmatic terms with new initiatives if we are to endure as a multiply diverse and far flung community of critical outsider academic activists. Whether we will or not remains in the balance. Our experiment in critical outsider jurisprudence remains, after all, still under construction.

*C. New Foundations: Innovations and Initiatives towards a Third Decade*

In addition to rearranging the Portfolio of Projects, restructuring our internal self-governance, and enacting our commitment to inter-generational transitions, our recent Self-Study and Strategic Planning process also yielded two new fundamental initiatives that build on our programmatic innovations of the past two decades. The first of these endeavors is to provide our first community text in the form of a coursebook designed for use specifically in social justice classes or programs. The second is our first attempt to establish a community campus in brick-and-mortar terms. Both exemplify the perils and promises of the moment, as well as the continuities and discontinuities between past and present. Each represents a programmatic LatCrit response to the circumstances, challenges and contradictions of these times together, the pair is designed to promote the efficacy and sustainability of OutCrit studies, networks and initiatives more generally.

Both thereby affirm the LatCrit commitment to progression, continuity and flexibility—or to long-term autonomy and self-sustainability, including, and especially at this particular conjuncture of inter-generational transition, programmatic evolution and structural dislocation. Each is designed to build on the advances of the past, as well as to build our collective, coalitional capacity to confront the challenges and contradictions of the present and future. Jointly, they provide new foundations for the continuation of our collaborations during the coming decade, and specifically in light of the perilous conditions that prevail and surround us. Each and both exemplify the standing LatCrit approach to theory, community and praxis in law, education and society.

Both also represent timely programmatic interventions to support faculty, courses and scholarship that center the law's formal commitment to justice, even and especially in the face of "crisis" and neoliberalized austerity. Each, in different ways, creates new resources for

faculty, activists and scholars to develop justice-centric projects, networks and organizations. In tandem, these two new initiatives continue longstanding LatCrit trajectories, as well as respond to the times of this moment.

The first, the Critical Justice Coursebook (CJC) project, is designed to provide an integrated multi-media teaching resource for use in law schools and other disciplines by faculty in justice studies courses.<sup>98</sup> But this resource is not designed to duplicate the rich materials already devoted to various types of community-oriented social justice legal practices; instead, it is designed to complement these materials in unique terms. Marshaling the scholarship of the past two decades, this project aims to bridge several longstanding gaps in legal education: gaps in theory and practice, in domestic and international studies, and in law versus other disciplines.<sup>99</sup> Building on the core competencies of legal education, this project focuses on “social impact lawyering” spanning in-court as well as out-of-court skills, strategies and goals. Grounded in justice as a preeminent legal value, it provides teachers and practitioners a solid framework for justice teaching and practice. The result is a unique resource that showcases the substantive advances of OutCrit scholarship and demonstrates concretely its application in lawyering settings geared for maximum social impact.

Once available in 2016, this unique resource should enable teachers in mainstream courses, smaller settings, or clinical contexts to teach justice-related topics with a sharper critical bend: the substantive materials on theory, identity and inequality are designed to help equip students to engage in contextual, structural, historical and intersectional analysis, while the inter-disciplinary materials on social impact lawyering expose students to advocacy skills and strategies mostly missing from law schools (and other justice studies) today. The combination is potent, and aims to support the continuing efforts of faculty everywhere to maintain the vigor of justice studies despite austerity—and especially to help foment the development and teaching of critically-grounded justice studies that apply the insights of theory to the practice of law in socially relevant ways. Over time, this CJC project should help to foster coalitional networks of teachers and scholars devoted to a vigorous cross-disciplinary field with increasing depth and durability.

98. See Bender & Valdes, *supra* note 19, at 432–39.

99. *Id.* at 436–38.



The second of these new initiatives, the LatCrit community campus officially named Campo Sano, or Camp Wellness, is designed to become a hub of activities carried out by varying individuals or groups committed to the values and aspirations that underlie our shared work.<sup>100</sup> As we prepare for a third decade of LatCriticality, Campo Sano is being prepared to host community projects already included in our Portfolio, as well as new projects or events, including those of allied networks and organizations.<sup>101</sup> Reflecting our re-assertion of justice as the foundational value of law, this community campus will become home to the Living Justice Institute,<sup>102</sup> which will serve as a flexible vehicle for these and similar activities to be scheduled and conducted on the grounds of Campo Sano in affordable, autonomous terms.

Campo Sano and the Living Justice Institute, like the Critical Justice Coursebook and other LatCrit choices, projects or initiatives, is designed to enhance our collective capacity for autonomy and sustainability, as well as for coalition-building, both intellectually and fiscally. The development of a brick-and-mortar community center with open uses and democratic access, like the production of a coursebook for widespread adoptions and applications, can and should enhance both the material and intellectual capital available to LatCrit and OutCrit networks for future leveraging.<sup>103</sup> Campo Sano is designed to provide a safe haven in concrete terms for the incubation of diverse justice-grounded studies, projects and networks—both existing and not. These two new initiatives, undertaken as part of our Strategic Planning process, are designed to take LatCrit contributions to the development of OutCrit studies and alliances to the next level of theory, community and praxis in institutional as well as substantive terms.

With the capacity to conduct activities in our own facilities, and with the related ability to reduce and control costs as well as logistics, Campo Sano makes LatCrit praxis easier to expand and sustain. And with the capacity to teach from a widely-available coursebook that brings together key texts for maximal pedagogical utility, the CJC pro-

100. *Id.* at 443–44.

101. *See* Valdes, *Coming Up*, *supra* note 46, at 536–40.

102. During 2014, as part of these preparations, LatCrit secured trademark protection of “Living Justice Institute” for this purpose, and established a separate website for the Institute that currently is under development.

103. The Campus, the Institute and the Coursebook are distinct initiatives designed to be mutually-reinforcing in synergistic ways: each should enhance the contributions of the others toward the long-term sustainability of critical and outsider theory and praxis in intellectual as well as in material terms.

ject makes inter-generational pipelining easier to start and sustain. Moreover, both initiatives confirm our long-term view: both contemplate and require inter-generational participation to evolve and take hold.

In significant ways, then, both Campo Sano and the CJC Coursebook reflect *and* project the development of a rich and thick critical outsider ecosystem in U.S. legal academia since the 1980s. These collective efforts plainly and simply would not be possible—or worth it—without the communities, coalitions, networks and infrastructure that we collaboratively have emplaced during the past two and more decades. As LatCritters and allies stand at the cusp of a third decade, these new initiatives in LatCritical praxis hopefully will enable us creatively, mutually and coalitionally to support each other and our work for the years to come as we continue to pursue equal justice in law, education and society.

Today, as LatCritters look toward our third decade, these two new initiatives provide new spaces and frameworks for personal collective praxis and coalitional collaborations across disciplines, identities and other categories. Each provides new justice-oriented platforms and resources from which to conduct our work as activist scholars under conditions of increasing austerity and hostility. Individually and jointly, these new additions to the LatCrit Portfolio of Projects strengthen our zone of safety to carry on our coalitional anti-subordination work with integrity, while also helping to illustrate some of the real-time ways in which OutCrit networks can engage the current context of crisis in proactive, principled, synergistic, capacity-building ways—and in decidedly inter-generational, forward-leaning terms.

As with everything we do, the ultimate outcomes of these two new initiatives remain contingent. As always, these efforts are marked not only by a clear sense of critical purpose but also by the pressures of external circumstance, our own human frailties, and inevitable group limitations; productive tensions are never far off. In the end, we may never quantifiably know the actual difference that any of these projects have made or might make. And maybe the struggle for justice in law, education and society is a perpetual condition after all. All this we know, understand, and periodically recall.

Thus, amidst all this disorienting uncertainty, one fact stands clear: the LatCrit community, at twenty, is doing our level—if limited—best to make a positive difference in law, education and society. In tenuous and trying socio-legal times, perhaps this much is all we can ex-

pect or demand of each other as a critical and coalitional community of academic activists. In the current context of heightened contradiction, the LatCrit community is especially fortunate to be situated within the enriched and expanded ranks of overlapping OutCrit formations that have developed in more recent years. As a result of this work and progress, and despite the trials and limitations that pressure us, today we stand poised to take the necessary next steps in building our long-term capacity for personal and collective praxis toward equal justice in law, education and society.

*D. Next Steps: Virtual Capacity-Building as LatCritical Praxis*

As already outlined, today's context of crisis and contradiction has intensified the challenges facing LatCrit-OutCrit scholarship and praxis even as our internal capacities are more developed than ever before. Under these conditions, we must find the ways and means of improving our current capacity for long-term self-sustainability across multiple existential levels ranging from the human to the fiscal. Even though—or perhaps because—we cannot know how today's furies will fare in coming years, we must be prepared for more of what today's horizons appear to forecast. Fortunately, two decades of praxis now allow us to look forward during, and despite, especially daunting times, and with clear-eyed determination as we timely search for the most efficacious next steps forward.

Despite two decades of academic activism, the current context of crisis clearly requires more, and one key gap in our efforts thus far is becoming increasingly glaring: the smarter use of newer technologies to minimize the burdens of our physical diffusion and to maximize the impact of our always-meager resources. Of course, this community already has labored mightily to establish an extensive website with related cyber resources, which today constitutes the third “basket” in our Portfolio of Projects.<sup>104</sup> As a result, our website provides a wealth of materials on LatCrit theory, community and praxis.<sup>105</sup> But the recent and anticipated reductions in funding and other resources necessary for our programmatic work make clear that LatCrit and related OutCrit networks must become savvy in the ways of the ether world—and without undue delay.

104. See *supra* text and sources at notes 111–113.

105. See LATCRIT, *supra* note 13.

In the same way that LatCrit scholars conceptualized and implemented programmatic methods to create a community Portfolio of Projects during our first decade, and then developed a multi-leveled infrastructure for collective autonomy and internal self-governance in more recent years, we now and next must construct the capacity to deploy new and emergent technologies to successfully navigate the challenges of crisis and contradiction. As the pressures of ideologically selective austerity grow, so must our capacity to maintain our year-round zone of safety for OutCritical work through increasingly and creatively virtualized synergies. The more that the material conditions of society and Academy turn against the anti-subordination substance and coalitional mission driving OutCritical work to date, the more that we must marshal cyber resources to offset, if not go beyond, the cut-backs of reaction as we persist in going forward. Nothing less will do if we are serious about long-term self-sustainability and praxis in law, education and society.

Looking ahead, we must realize that high-tech capacity building in the current and foreseeable context of LatCrit praxis can bring timely if not essential benefits along (at least) three axes of collective action. First, technology can allow Project Teams to administer their respective programs and events more efficiently and perhaps effectively, helping us to maintain our zone of safety for substantive programmatic activities and professional individual development. Second, and similarly, we as a community, Board and Steering Committee should enhance our technological capacity to manage our internal self-governance more efficiently and effectively. Both of these promote efficiency by reducing the costs of material alternatives but, high-tech capacity opens new affirmative opportunities for raising funds that can provide basic and crucial material support for community projects from year to year. This win-win dynamic should put the potential benefits of building our high-tech capacities in sharp relief; as a set, this trio of potentialities can and should increase substantially our collective overall capacity for ongoing autonomy and self-sustainability as an inclusive and democratic OutCritical formation committed to anti-subordination academic activism through personal collective praxis.

As an academic democracy committed to activist praxis, LatCrit community projects depend on the active participation and contribution of diverse individuals for their ongoing efficacy. Consequently, circumstances or forces that threaten or diminish our capacity for participatory interaction can, in time, put into question the very character

of our jurisprudential experiment. The disruption of methods or practices designed to produce critical knowledge and build coalitional solidarity steadily erodes our communal capacity for anti-subordination praxis. LatCrits cannot allow crisis and cutbacks to become the context for our own destabilization, or retrenchment. Technology undeniably can provide some useful tools that respond to the conditions and contradictions of these times.

Headlines in recent years from squares and streets all over the world have made clear the potential reach of social media to catalyze and organize anti-subordination action.<sup>106</sup> Academic conferences and journals similarly urge the active, widespread, creative applications of technology in and out of the law classroom, both to teach and to write.<sup>107</sup> Culture confirms that personal uses of technology are as pervasive as ever—if you happen to be on the right side of the digital divide.<sup>108</sup> These and other indicators point to varied possible means of navigating some of the pressures that LatCrit-OutCrit formations face today in the guise or context of crisis.

Moreover, customary modes of academic interaction increasingly must be recognized as environmentally irresponsible, as each of us establishes enormous carbon footprints travelling thousands of miles to deliver a dozen-minute talk or attend a two-hour meeting.<sup>109</sup> In coming years, this practice will become indefensible, even if it does continue for a relatively few, especially important, occasions. In principle,

106. For an overview, see PAULO GERBAUDO, *TWEETS AND THE STREETS: SOCIAL MEDIA AND CONTEMPORARY ACTIVISM* (Pluto Press 2012); W. Lance Bennett & Alexandra Segerberg, *The Logic of Connective Action*, 15 INFO. COMM. & SOC'Y 739 (2012); W. Lance Bennett, Alexandra Segerberg & Shawn Walker, *Organization in the Crowd: Peer Production in Large-scale Networked Protests*, 17 INFO. COMM. & SOC'Y 232 (2014); Emily Pasi, *Social Media and Advocacy: Digitally Sharing the Story*, 71 J. HOUSING & COMMUNITY DEV. 25 (2014).

107. Examples include, for instance, Oliver R. Goodenough, *Developing an E-Curriculum: Reflections on the Future of Legal Education and on the Importance of Digital Expertise*, 88 CHI-KENT L. REV. 845 (2013); see also *CALI Conference for Law School Computing*, CALI, <http://www.cali.org/CALI-Conference> (last visited Feb. 24, 2015).

108. For more readings on the digital divide, see Jane L. Levere, *Reaching Those on the Wrong Side of the Digital Divide*, N.Y. TIMES, Mar. 21, 2013, at B6; James Scott, *Hispanics Rank High on Digital Divide*, N.Y. TIMES, June 17, 2011,

[http://www.nytimes.com/2011/06/17/us/17bcjames.html?\\_r=0](http://www.nytimes.com/2011/06/17/us/17bcjames.html?_r=0); Kenneth Sharperson, *The Digital Divide: Modern Day Jim Crow?*, N.J. LAW., Oct. 2000, at 50. See generally Barney Warf, *Contemporary Digital Divides in the United States*, 104 J. ECON. & SOC. GEOGRAPHY 1 (2013).

109. For similar concerns across the disciplines, see John P. A. Ioannidis, *Are Medical Conferences Useful? And for Whom?*, 307 J. AM. MED. ASSOC. 1257 (2012); David Selden, *Heading Down the Green Path: How Can We Continue to Improve Our Annual Meeting's Sustainability Efforts?*, 18 AALL Spectrum 8 (2013); Elisabeth Rosenthal, *Your Biggest Carbon Sin May Be Air Travel*, N.Y. TIMES, Jan. 27, 2013, <http://www.nytimes.com/compendium/reader/TVVW5H4HIR22LI32I72AI45L2IA/662/2179>.

this practice largely already is difficult to justify—except, for instance, when face-to-face interaction is at an extraordinary premium.<sup>110</sup> As each semester and year pass, this historical practice will become increasingly difficult to continue, due to both principled and practical reasons, as well as individually and collectively.

As resources are cut and customary academic modes of communication, interaction and collaboration become increasingly difficult, inaccessible or unsustainable, virtual analogs or alternatives will become increasingly important to our survival, if not vigor. We, after all, are embedded in this world and are a product of it. We cannot pretend immunity; we never have. Instead, we must anticipate specific targeting. We must prepare for, and begin, grappling with new instruments in order to reimagine and continue critical struggles against both new and old obstacles to anti-subordination progress.

Furthermore, in coming years, if the recent past is any indicator, existing technologies most likely will become more available to us, both in economic and practical terms. In addition, new technologies will emerge with new opportunities for communication and cooperation. Even if we do nothing, new technologies will descend on us in the coming decade, just as they have in the past two. If history indicates anything, these trends no doubt will open new ways and means for LatCrit democracy to evolve in principled yet pragmatic terms—if we prepare to do so, and then do so.

The dispositive question, then, is whether LatCritters will be ready, willing and able to exploit the opportunities for anti-subordination praxis of new or newer technologies to press justice studies and praxis forward over the next several years. The more specific question may be: How should or will LatCritters progressively and synergistically combine the customary practices of our first two decades—academic events, planning retreats, board meetings, project team workshops—with the emergent cyber-possibilities offered by cutting edge technologies. These questions effectively query whether LatCritters will be more proactive, or more reactive, toward foreseeable anti-subordination opportunity.

Fortunately, these serious queries arise at precisely the juncture when the five-year timeframe of the current LatCrit Strategic Plan comes to an end,<sup>111</sup> and as new generations increasingly spearhead

110. From an internal LatCrit perspective, the key exemplars would include the Annual Board Meeting and the occasional planning retreats devoted to long-term development.

111. See Valdes, *Coming Up*, *supra* note 46, at 535.

LatCrit projects and internal self-governance at every level of programmatic planning and action. Although we cannot predict precise next steps, we look forward to the results of a now-characteristic LatCrit practice: the impending self-critical communal review of our attempts at implementation of the Strategic Plan.<sup>112</sup> This upcoming process will help not only to identify and correct current missteps, but also to map community directions and coalitional priorities over the next several years. Necessarily, this process will also help to advance and consolidate the ongoing internal transition to rising LatCritical generations. Ideally, this upcoming process will help to further secure or conduce the conditions for the long-term self-sustainability of LatCrit theory, community and praxis in principled coalitional terms.

With this collective and critical self-review process and these generational transitions both underway, and in tandem, we also hope—indeed, we strongly urge—that LatCrit (and allied networks) collectively prioritize technological capacity-building as an investment in our long-term efficacy as a democratic, diverse academic community. This moment in our internal development demands it, and can help to facilitate the key actions we need to take next. To start, we must recognize collectively, and specifically in the context of ideologically selective austerity, that technological capacity provides one readily accessible vehicle for ameliorating the heightened contradictions of the immediate and foreseeable moment in law, education and society.

Going forward, we must integrate new practices using virtual tools to sustain and improve both the operation of our projects as well as the administration of our internal-self-governance infrastructure—including new initiatives or yet-to-be conceived innovations. Whatever else we might undertake in substance or as method, we must engage in personal collective praxis focused on building our virtual capacities expeditiously, recognizing this work as integral to the sustenance and improvement of our programmatic portfolio, functional cohesion and communal solidarity.

The operational purpose of these efforts must, in the end, help us reproduce the productive potential of face-to-face meetings with a dramatic reduction of costs and logistics. From tools and technologies like Skype and other teleconferencing options, to newer technologies like Dropbox and other information management instruments, to new

112. The LatCrit Board undertook a self-critical assessment of our progress in implementing the five-year Strategic Plan two years ago, midway through its time period. Based on past practice, the next self-review will likely commence in 2016–17.

and emergent mobile applications, we must think with extraordinary imagination about our evolving practices to help us virtually capture or recreate—if not surpass—the positive working conditions and potentialities of currently embodied practices that now range from smaller retreats and workshops to large-scale conferences and programs. We must make the tangible virtual without loss of efficacy. Given the pace of societal events, our third decade of praxis inevitably must witness this structural operational move on our collective, institutional part. The sooner, no doubt, the better.

To sustain our work as well as advance our substantive and methodological goals in the current and foreseeable context of austerity and adversity, we must start learning to do virtually what we now are accustomed to doing materially. We should seek and deploy new cyber opportunities to build our overall capacity for more effective and efficient anti-subordination praxis in the future. As with generational transitions and fundraising, our short-term actions and limitations may weigh heavily on the long term. What we do and do not know specifically on virtual capacity-building may help settle what we can or cannot do more broadly and substantively later. Self-sustainability again hangs in the balance.

Importantly, therefore, these programmatic hopes and forward-looking urgings focused on building virtual capacities are neither abstract nor wishful. On the contrary: the ongoing inter-generational transitions noted earlier already have made clear the relative savviness of rising generations on precisely these points and priorities. With a clear recognition of context and contradiction, and a more conscious collective commitment to technology as praxis, and incoming generations of tech-savvy LatCritters, we now are able to stand at the cusp of a third decade poised as best as circumstances permit to help sustain OutCrit knowledge, solidarity and action in principled, efficacious terms for the longer term.

This observation is not to say simply that rising generations of OutCrit and LatCrit scholars are relatively more tech-savvy than preceding generations. This fact makes them just akin to their generational peers more broadly. The additional, and important, fact is that they have actively begun to use this savviness in creative and innovative ways to advance anti-subordination academic activism, and are doing so now, during these times of rising crisis and austerity. This combination provides a key part of the formula that will help us—and, increas-



ingly, them—to navigate successfully, as a far-flung community of academic activists, the shifting sands of the coming decade(s).

Moreover, and crucially, we stand in solidarity with other OutCrit formations to mutually reinforce the social, legal and institutional effects of our new and old labors despite the rising pressures and dislocations of the moment, including, most notably, and as discussed next, the emergence and consolidation of the “ClassCrits” formation. Reflecting the progress of these past few decades, the expanding OutCrit universe makes today’s collaborative opportunities richer than ever in jurisprudential terms. Even as we look back to learn from history and experience—and thus help ourselves to stay substantively and methodologically grounded—we also remain equally focused on marching forward coalitionally toward a postsubordination society based on the ethics and values that have guided our work since 1995. For this reason, we welcome and applaud the diversified jurisprudential developments relating to ClassCrits and other emergent formations, as well as the wide-ranging Symposium papers from rising generations of OutCritical scholars that illustrate this diversification of our ranks and that we address below, respectively.

## II. EXPANDING THE OUTCRIT UNIVERSE: FROM LATCRIT TO CLASSCRITS

ClassCrits legal study is a relatively new formation of critical outsider, or OutCrit jurisprudence. As such, the comments below reflect its experience as both limited and quickly evolving. Nevertheless, the formation of ClassCrits as a collaborative effort in studying, exploring, examining and producing knowledge about the relationship between law and economic inequality was a conscious decision influenced, in part, by the organizational and analytical values, methods, and insights of OutCritical legal thought. That is, ClassCrits as a network of scholars and activists consciously sought to build community through producing knowledge and scholarship on law and the economy and to produce scholarship through the building of community.<sup>113</sup> In doing so, it employed typical OutCrit values, methods and practices, such as the cultivation of safe space, democratic and coalitional praxis, and a big tent approach to inclusion. Further, it employed OutCrit analytics, such as interdisciplinarity, intersectionality, contextuality and praxis. The

113. Francisco Valdes, *LatCrit: A Conceptual Overview*, LATCRIT, <http://latcrit.org/content/about/conceptual-overview/> (last visited Feb. 24, 2015) [hereinafter Valdes, *A Conceptual Overview*].

goal of this work is to promote justice, anti-subordination practice, and more egalitarian arrangements—or practices—that would contribute to the wellbeing of people, including those in the Academy, and society as a whole.

At the same time, commitments to these principles arose organically and were reinforced by the nature of the substantive inquiry into the relationship between law and the economy, given the hegemony of the neoclassical economic frame and the neoliberal policies and “free market” ideology it inspired. In the context of the work, ClassCrits added and developed additional analytical methodologies, such as asking the question: Who has most directly benefitted from a particular rule, practice or arrangement?<sup>114</sup> This method facilitates ClassCrits’ explorations and examinations of the way in which economic power is constituted and deployed. Through it, another analytical tool, the exposure of blindness and gaps, aid scholars in rendering visible hidden assumptions, omissions and mystified arrangements. Together they assist ClassCrits in deconstructing and decoding veiled discursive and systemic practices. Further, ClassCrits has added a relational understanding of class to its toolkit. That is, class is not simply a status but a relational dynamic. ClassCrits perceives this concept(s) as useful both for promoting solidarity and understanding growing inequality in the United States and worldwide,<sup>115</sup> a phenomenon the notice of which was one of the most immediate reasons leading to the formation of ClassCrits.<sup>116</sup>

Finally, the two models that have had the most direct impact on the evolving structure of ClassCrits have been LatCrit and the Feminism and Legal Theory Project (FLT) founded and directed by Martha Fineman. LatCrit methods, organizational format and publication

114. Athena D. Mutua, *Stuck: Fictions, Failures and Market Talk as Race Talk*, 43 SW. L. REV. 517, 532, 542–44 (2014) [hereinafter Mutua, *Stuck*]; see also Mutua, *Introducing ClassCrits*, *supra* note 48, at 890 (simply posing the question of who benefits.).

115. See Mutua, *Introducing ClassCrits*, *supra* note 48, at 863–64, 900–06 (discussing, in part, Martha Mahoney’s article, *Class and Status in American Law: Race Interest and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799 (2003), in which she argues that a relational understanding of class promotes cross-racial solidarity, while a status view of class suggests that if people of color gain in status, white people lose status).

116. *Id.* at 887–91 (describing the two initial organizers’ perspectives and work in constituting part of the motivations for forming the ClassCrits network). Martha McCluskey and Athena Mutua were the principal organizers of the ClassCrits network. Later, Angela Harris joined the group as a principal organizer and participated in organizing ClassCrits III. She also can be credited with spearheading, among others, the transition of ClassCrits from the workshop model to the more openly democratic conference model discussed below at notes 124–129 and accompanying discussion.

mechanisms predominately informed ClassCrits' evolving and more democratic annual conference structure, the primary focus of the discussion below. The FLT Project has informed the more individually directed and single-issue-focused smaller gatherings organized by ClassCrits affiliated members and contemplated by ClassCrits in the development of one or more book projects.

### *A. ClassCrits: Origins, Organization and Meetings*

"ClassCrits: Toward a Critical Legal Analysis of Economic Inequality," was launched in two workshops held at SUNY Buffalo Law School and sponsored by the Baldy Center for Law & Social Policy in 2007.<sup>117</sup> The workshops established a growing network of scholars interested in engaging in critical analyses of law and the economy, with a particular inquiry into the relationship between law and rising economic inequality both in the United States and across the globe.<sup>118</sup>

The name ClassCrits signaled two significant ideas.<sup>119</sup> First it signaled the network or group's commitment to analyzing economics through the lens of critical legal thought or OutCrit jurisprudence, as proffered, practiced and understood through movements such as critical legal studies, critical feminist theory, critical race theory, LatCrit, and queer theory. This meant that the group started with the assumption that economics and law, and the relationship between the two, are inextricably political, as well as, "fundamentally tied to questions of systemic status-based subordination including among others, race, class and gender-based subordination."<sup>120</sup>

Second, it signaled a commitment to an interdisciplinary approach to economics in law. Interdisciplinarity is a staple of critical legal scholarship.<sup>121</sup> However, this commitment was also inherent in the

117. Mutua, *Introducing ClassCrits*, *supra* note 48, at 859–61; *About ClassCrits*, CLASSCRITS, <https://classcrits.wordpress.com/about/> (last visited Feb. 24, 2015).

118. *About ClassCrits*, *supra* note 117; Mutua, *Introducing ClassCrits*, *supra* note 48, at 859.

119. The name ClassCrits was adopted from an article discussing in part the need for additional analyses of class and economic structures and law. See Athena D. Mutua, *The Rise, Development, and Future Directions of Critical Race Theory*, 84 DENV. U. L. REV. 329, 377–93 (2006) [hereinafter Mutua, *The Rise*].

120. Mutua, *Introducing ClassCrits*, *supra* note 48, at 865; *About ClassCrits*, *supra* note 117.

121. See, e.g., Stephanie L. Phillips, *The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History*, 53 U. MIAMI L. REV. 1247, 1249–50 (listing basic tenets of critical race theory (CRT) and noting that CRT "is interdisciplinary and eclectic (drawing upon, *inter alia*, liberalism, poststructuralist, feminism, Marxism, critical legal theory, postmodernism, and pragmatism) with the claim that the intersection of race and the law overruns disciplinary boundaries"); Valdes, *A Conceptual Overview*, *supra* note 113 (noting that "[i]n my view, these preliminary LatCrit efforts have pointed to four basic aims or functions of critical legal theory: the

ClassCrits' approach because the network was deeply skeptical of the dominant neoclassical economic approach to understanding the economy, including its application in law through the "Law and Economics" movement.<sup>122</sup> Consequently, ClassCrits was dedicated to exploring and better integrating the rich diversity of economic methods and theories into law, including considering the possible meaning and relevance of economic class—theories of class relations and antagonisms—to the contemporary context. In addition, some of these theories were based in fields other than "economics;" fields such as sociology, psychology and political science, among others, from which ClassCrits also sought to draw.<sup>123</sup>

Loosely organized, ClassCrits consists of a fluid core group of some fifty or sixty affiliated scholars and activists,<sup>124</sup> with another one hundred or so scholars and activists participating through the annual ClassCrits conference over multiple years. To date, ClassCrits has held seven conferences, including the early workshops. However, the conferences differ considerably, in terms of democratic drive and organization, from the early workshops.

The first three meetings of ClassCrits, organized as workshops, were meant to both gauge and promote interests in the study of economics in law from a progressive perspective. In addition, these workshops sought to develop the potential content of such an effort as distinct from and yet possibly inclusive of socio-economic theory and organization and poverty-related theories and formations.<sup>125</sup> As such, the initial promoters and organizers of the ClassCrits network crafted

production of critical and interdisciplinary knowledge; the promotion of substantive social transformation; the expansion and interconnection of anti-subordination struggles; and the cultivation of community and coalition among outsider scholars.").

122. See, e.g., RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (8th ed. 2010).

123. See, e.g., Laura Kessler, *Getting Class*, 56 *BUFF. L. REV.* 915, 929–30 (2008) (discussing gender-based economic inequality and the gaps unexplored in feminist theory because of a blindness to class. She suggests incorporating sociology within left legal theory because it explores the way in which human behavior is shaped by structures.). One might also consider work by sociologist Erik Olin Wright; psychologist Daniel Kahneman, famous for his contributions to behavioral economics; and political scientist James Robinson; all of whom explore issues around economics. Consider for instance, DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2013); ERIK OLIN WRIGHT & JOEL ROGERS, *AMERICAN SOCIETY: HOW IT REALLY WORKS* (2010); Daniel Kahneman, *A Perspective on Judgment and Choice: Mapping Bounded Rationality*, 58 *AM. PSYCHOLOGIST* 697 (2003); Erik Olin Wright, *Class, Exploitation and Economic Rents: Reflections on Sorensen's "Toward a Sounder Basis for Class Analysis,"* 105 *AM. J. OF SOC.* 1559 (2000).

124. See *About ClassCrits*, *supra* note 117 (listing affiliated scholars. This group has shifted some over the years with several of the members who have served on the steering committee, not among those listed here.).

125. See Mutua, *Stuck*, *supra* note 114, at 523–24 (discussing the past ClassCrits conferences).

the workshop themes, format and participation list based on those identified as possibly having an interest in or potentially providing a specific contribution to the study and establishment of a network on economics in law. So for instance, the third workshop, held in 2010, brought together with lawyers and legal activists several heterodox economists to consider questions related to various economic theories and multiple understandings of the Great Recession, among other things. All three workshops were held in Buffalo, and while theoretically grounded in critical thought, relied on a workshop model developed there.<sup>126</sup>

In contrast, the conferences rotate to other sites. ClassCrits conferences have now been held at the law schools at American University, University of Wisconsin at Madison, Southwestern Law School, and University of California at Davis (UC Davis). This year, 2015, the conference will be held at the University of Tennessee. More importantly, the conferences, the first, referred to as ClassCrits IV, were more democratically constructed and planned, with the conferences organized around the submissions of papers and panels on a host of topics. Some of the papers reflected the usually broadly conceptualized conference theme while others reflected general ClassCrits areas of inquiry. These include:

- The legal and cultural project of constructing inequalities of all kinds as natural, normal, and necessary.
- The relationships among economic, racial, and gender inequality.
- The development of new methods (including the interdisciplinary study and development of such methods) with which to analyze and criticize economics and law (beyond traditional “law and economics”).
- The relationship between material systems and institutions and cultural systems and institutions.
- The concept and reality of class within the international legal community, within international development studies and welfare

126. This model was developed in organizing a group of scholars to consider the challenges to and promise of progressive black masculinities. See Athena D. Mutua, *Introduction: Mapping the Contours of Progressive Masculinities*, in *PROGRESSIVE BLACK MASCULINITIES?* xi–xxviii (Athena D. Mutua ed., 2006) (discussing the two workshops on black masculinities).

strategies, and within a “flattening” world of globalized economics and geopolitical relations.<sup>127</sup>

Conference themes generally have arisen out of a group of past conference participants coming together, seeking to examine a particular issue, and agreeing to host a conference;<sup>128</sup> or conference participants volunteering to host a conference and forming a committee to identify a topical theme and draft a call-for-papers. Increasingly however, as a more structured governance body has emerged, scholars and/or activists who would like to host a conference have available to them a standing ClassCrits conference-organizing committee. This committee aids the conference hosts in brainstorming their theme or suggesting others and then assists them in drafting the call-for-papers, organizing submitted paper proposals, and planning the conference, as well as arranging works-in-progress (WIP) sessions for junior scholars.

The WIP sessions are an integral part of the conference, in which at least one senior scholar is assigned to review a junior scholar’s WIP and an audience is created for its presentation.<sup>129</sup> This programmatic effort aids in developing the work of these scholars, contributes to the spread of ClassCrits ideas in the Academy, and potentially ensures the intergenerational growth and continuation of ClassCrits organizational and governance structures. Between ClassCrits VI and VII junior scholar participation in WIP sessions more than doubled.

ClassCrits governance structure at this juncture consists of the conference-organizing committee and an executive board. Thus far, anyone who wants to participate on the conference-organizing committee may do so. As a general matter, committee members have participated in one or more conferences. The committee currently consists

127. These conference themes are included on every call for papers. See, e.g., *ClassCrits VII: Poverty, Precarity & Work: Struggle & Solidarity in an Era of Permanent(?) Crisis*, U.C. DAVIS SCH. OF LAW, <https://law.ucdavis.edu/class-crits/> [hereinafter *ClassCrits VII*].

128. The conferences at the American University and University at Wisconsin seemed to have emerged in this manner. See *ClassCrits IV: Criminalizing Economic Inequality*, CLASSCRITS, <http://ClassCrits.wordpress.com/past-workshops/ClassCrits-iv-criminalizing-economic-inequality-2/> (last visited Feb. 24, 2015); *ClassCrits V Workshop: From Madison to Zucotti Park: Confronting Class and Reclaiming the American Dream*, UNIV. OF WIS. LAW SCH., <http://www.law.wisc.edu/lls/2012ClassCritsv/index.html> (last visited Feb. 24, 2015).

129. Typical language in the call for papers regarding works-in-progress reads: “In addition, we extend a special invitation to junior scholars (i.e., graduate students or any non-tenured faculty member) to submit proposals for works in progress. A senior scholar as well as other scholars will comment upon each work in progress in a small, supportive working session.” See, e.g., *ClassCrits VII*, *supra* note 127.

of both scholars and students.<sup>130</sup> The executive board grew out of the organizing committee. Individuals volunteered for these positions and were thereafter elected by the committee and nominally the ClassCrits body present at the conference at Southwestern Law School (though participation was limited). Notably, though the initial organizers of ClassCrits sit on the conference-organizing committee, none sit on the executive board.<sup>131</sup>

In addition to this internal organization, ClassCrits stands in coalition with other organizations and critical formations primarily through its affiliated members, particularly those on the conference-organizing committee. For instance, several affiliated and organizing committee members sit on the LatCrit board and regularly participate in its conferences. Still others have participated in an on-going basis in the FLT Project bringing insights back to the ClassCrit organization and network. Additionally, some are involved in projects with organizations such the Political Economy Research Institute at the University of Massachusetts at Amherst (PERI), one of the organizations from which heterodox scholars were invited for ClassCrits III.<sup>132</sup> Another organization is the Economic Justice Studies Project,<sup>133</sup> which is organized by a ClassCrits committee member and which recently hosted a conference on vulnerabilities and social and economic well-being,<sup>134</sup> and co-organized a conference on cost-benefit analysis,<sup>135</sup> both of which many ClassCrits affiliated members attended. And, for example, affiliated

130. Current members include: Wendy Bach, University of Tennessee College of Law (co-chair of ClassCrits VIII conference); Lucy Jewel, University of Tennessee College of Law (co-chair of VIII conference); Tonya Brito, University of Wisconsin Law School; Kim Clark, Pacific School of Religion and Graduate Theological Union, Berkeley, California; Angela Harris, U.C. Davis School of Law; Rana Jaleel, Columbia Law School; Martha R. Mahoney, University of Miami School of Law; Saru Matambanadzo, Tulane University Law School; Martha McCluskey, University of Buffalo School of Law; Athena Mutua, University of Buffalo School of Law; Rene Reich-Graefe, Western New England Law School; and Matthew Titolo, University of West Virginia School of Law.

131. Danielle Hart, Southwestern Law School, is the chair of the executive board.

132. POL. ECON. RES. INST., <http://www.peri.umass.edu/> (last visited Feb. 24, 2015); see *ClassCrits Workshop III: Rethinking Economics and Law after the Great Recession*, CLASSCRITS, <https://classcrits.wordpress.com/past-workshops/classcrits-workshop-iii/#bios> (last visited Feb. 24, 2015).

133. *Economic Justice Studies Project*, SUNY BUFFALO LAW SCH., <http://www.law.buffalo.edu/beyond/centers/ejsp.html> (last visited Feb. 24, 2015).

134. *Vulnerability, Resilience, and Public Responsibility for Social and Economic Wellbeing, June 13-14, 2014*, SUNY BUFFALO LAW SCH., available at <http://web.gs.emory.edu/vulnerability/zpdfs/Workshop%20Schedules/Social%20and%20Econmic%20Wellbeing%20Schedule.pdf> (last visited Feb. 24, 2015).

135. *Critiquing Cost-Benefit Analysis of Financial Regulation, May 19-20, 2014*, GEORGE WASH. UNIV., [http://www.law.gwu.edu/News/2013-2014events/Pages/Critiquing\\_CostBenefit\\_Analysis.aspx](http://www.law.gwu.edu/News/2013-2014events/Pages/Critiquing_CostBenefit_Analysis.aspx) (last visited Feb. 24, 2015).

members spearheaded and contributed to the Colombia Race and Law symposium issue on Critical Race Theory and Marxism.<sup>136</sup> In addition, the organization itself engages in coalition practice. So, for example, ClassCrits VII at UC Davis was held in conjunction with the Poverty and Place Conference organized by the UC Davis Center for Poverty Research.<sup>137</sup>

Similarly, ClassCrits is in coalition with movements on the ground through the activism and efforts of its affiliated members. But more concretely, ClassCrits, like LatCrit, engages in programmatic incorporation of community issues and activists in the conference from the venue in which the conference is held. The idea is that conference participants might learn and better understand local conditions while bringing experience, theory or insight to the table in shared conversation and multi-leveled dialogue.<sup>138</sup>

Finally, in addition to the annual conferences, ClassCrits is poised to sponsor smaller workshops and gatherings in order to advance particular goals. Although ClassCrits members have organized and participated in organizing smaller gatherings that seek to advance a particular topic, ClassCrits itself through its governance structure has organized a sub-committee to pursue, among other things, ClassCrits-focused book projects. While the conference model ClassCrits employs has been modeled after LatCrit conferences, these smaller gatherings are likely to follow the modes of The FLT Project. That is, they will be more tightly organized and the organizers will select only those papers that advance a singular topic or goal.

136. Symposium, *Critical Race Theory and Marxism*, 1 COLUM. J. RACE & L. 226 (2012).

137. This effort was spearheaded by a ClassCrits affiliated member. See generally, *ClassCrits VII*, *supra* note 127.

138. So for example, ClassCrits VIII states:

ClassCrits VIII particularly seeks to engage activists and lawyers who believe their work should be informed by a deep understanding of the limitations and potential of current legal and institutional structures, as academics and activists alike strive to energize and mobilize our many communities to participate and build coalitions for progressive social change.

We are also interested in receiving proposals from law clinicians who engage in activist lawyering as a core part of their curriculum design.

See ClassCrits VIII: Critical Coalitions Challenging the Structures of Inequality, Call for Papers and Participation (on file with author).



*B. Dominant Economic Theories Reinforcing Substantive  
OutCrit/ClassCrits Methodologies*

OutCrit jurisprudence and practice influenced the development of ClassCrits as a collaborative effort in the production of knowledge. For instance, the mission statement of ClassCrits, as Angela Harris explains, makes three central claims. First, it posits that understanding class and economic relations is essential for moving toward a free and just society. It, therefore, “calls for a renewed public conversation about class conflict, rather than silence, red-baiting, or the reduction of class purely to taste niches.”<sup>139</sup> Second, it suggests that “class power is inextricably connected to the development of racial and gender hierarchies as well as to other systems of unequal power and privilege,” and they to it.<sup>140</sup> That is, hierarchies of class, race and gender, among others, are mutually related and co-constitutive. And third, ClassCrits holds “that law is central to the creation and maintenance of structural inequalities” including economic subordination, and thus law is central to economic justice.<sup>141</sup> These claims together in various forms have long been explored and asserted by OutCrit jurisprudence,<sup>142</sup> and together em-

139. Angela Harris, *Foreword: ClassCrits VII: Poverty, Precarity & Work: Struggle & Solidarity in an Era of Permanent(?) Crisis*, 44 SW. L. REV. (forthcoming 2015).

140. Justin Desautels-Stein et al., *ClassCrits Mission Statement*, 43 SW. L. REV. 651 (2014).

141. *Id.* at 652; Harris, *Foreword*, *supra* note 139.

142. For RaceCrit perspectives on class, see, for example, John O. Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 201, 204 (1982) (discussing Julius Wilson's book, *The Declining Significance of Race*, and arguing that class is a significant factor in the lives of poor black people. But because of “law's reluctance to confront the issues arising from broad economic inequality that it is imperative that legal advocates treat the black poor as special, unique victims of racism.”); Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writings About Race*, 82 TEX. L. REV. 121 (2003) (urging more materialist approaches to the study of race); Angela Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994) (arguing for “return to the vexed question of the relationship between race and class”); Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 L. & CONTEMP. PROBS. 1 (2009); Mutua, *The Rise*, *supra* note 119, at 389–90; Charles Pouncy, *Institutional Economics and Critical Race/LatCrit Theory: The Need for a Critical “Raced” Economics*, 54 RUTGERS L. REV. 841, 841–42 (2002) (urging OutCrits to develop a critical race economics through institutional economics and noting that their failure to do so is limiting their ability to develop appropriate models for praxis); Symposium, *Going Back to Class? Re-emergence of Class in Critical Race Theory*, 11 MICH. J. RACE & L. 99 (2005). Though almost of the works cited thus far employ a form of intersectional analysis, Kim Crenshaw named the theory. See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color*, 43 STAN L. REV. 1241 (1991) (applying intersectionality to race and gender). On the role of law in structuring inequalities, see, for example, DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (6th ed. 2008).

ploy tools such as interdisciplinarity, intersectionality, contextuality and praxis.

While OutCrit jurisprudence influenced the development of ClassCrits, OutCrit methodologies, both in terms of its community building and analytical strategies, also grew organically within ClassCrits given its engagement with the dominant economic frame, neoclassical economics.

First, OutCrit community building methodologies such as cultivating ClassCrits as safe space and as inclusive—a big tent—became an asset given the dominance of neoclassical economic theory and ClassCrits’ skepticism regarding it. Neoclassical economic theory is hegemonic in the field of economics in the United States.<sup>143</sup> In fact, of the more than two-hundred schools offering “economic” programs, there are only about a dozen or so schools in the United States that offer heterodox economic graduate programs.<sup>144</sup> It is so dominant that the study of neoclassical economics is referred to as “economics.”<sup>145</sup> Thus, among the majority of those who know something about the field, neoclassical theory predominates.

However, neoclassical thinking also predominates, at least in some form, among those who do not know much about it. This is so because, as E. Roy Weintraub brags, it is practically the only type of theory taught in schools.<sup>146</sup> So for instance, many college students take courses in microeconomics (neoclassical or “mainstream”—based on neoclassical economics) and macroeconomics. However, neoclassical economic theory has so colonized macroeconomic thought, through efforts to synthesize the theory with Keynesian insights,<sup>147</sup> that neo-

143. See, e.g., E. Roy Weintraub, *Neoclassical Economics*, in *THE CONCISE ENCYCLOPEDIA OF ECONOMICS* (David R. Henderson ed., 2002) (explaining when “President Richard Nixon, defending deficit spending against the conservative charge that it was ‘Keynesian,’ is reported to have replied, ‘We’re all Keynesians now.’ In fact, what he should have said is ‘We’re all neoclassical now, even the Keynesians,’ because what is taught to students, what is mainstream economics today, is neoclassical economics.”); Gary Dymksi, *The Logic and Impossibility of Austerity*, 80 SOC. RES. 665, 677–78 (Fall 2013) (noting that that in its dealing with the Global South, “between 1980 and 1994 the World Bank and the IMF’s hegemonic use of general equilibrium approaches that fully accepted the rational expectations and classical critiques of Keynesian models,” was fully in force.).

144. HETERODOX ECONOMICS DIRECTORY, <http://www.heterodoxnews.com/directory/graduate.htm> (last visited Feb. 24, 2015).

145. See e.g., PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* (19th ed. 2010).

146. See e.g., Weintraub, *supra* note 143.

147. See e.g., RICHARD D. WOLFF, STEPHEN A. RESNICK & YAHYA M. MADRA, *CONTENDING ECONOMIC THEORIES: NEOCLASSICAL, KEYNESIAN, AND MARXIAN* 127–28 (2012) (discussing the neo-Keynesian synthesis). Keynesian insight suggests, among other things, that government intervention is necessary at times to stimulate aggregate demand or demand at the macro level. For a quick (two page) overview of Keynesian economics, see Sarwat Jahan, Ahmed Saber Mahmud & Chris Pa-

classical economics is primarily what is pursued at the graduate level and its precepts are likely what is remembered among non-economic majors. Further, fifty percent of American students take an economics course by the time they graduate from high school. The Council for Education, which has developed economic teaching standards for K-12 students, explains that these standards too are based on neoclassical economic theory.<sup>148</sup> And while these students and most undergraduate non-economic-majoring students probably remember little about their economics courses—something about supply, demand and the magic of the market—they are likely ripe for socialization into “free market” ideology.<sup>149</sup> Then in law, there is the (perhaps waning) predominance of the “Law and Economics” movement, which too is based on neoclassical theory.

Consequently, those who approach the study of the economy and economics in law from a perspective other than neoclassical economics, for example, are unlikely to find a friendly, instructive or helpful environment in working through their analyses.<sup>150</sup> ClassCrits provides a space that is safe for them to do so. In addition, ClassCrits’ big tent policy creates a space for, an engagement with, and an audience, as well as mutual learning environment for, those scholars approaching legal questions, among other issues, from an economic perspective other than a neoclassical approach, an approach for which there is no scarcity of people to engage.

Second, neoclassical theory’s methods reinforced ClassCrits collaborative method as necessary. For instance, neoclassical economic

pageorgiou, *What is Keynesian Economics*, INT’L MONETARY FUND: FIN. & DEV. (Sept. 2014), <http://www.imf.org/external/pubs/ft/fandd/2014/09/pdf/basics.pdf>. See generally JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY* (1936).

148. COUNCIL FOR ECON. EDUC., *VOLUNTARY NATIONAL CONTENT STANDARDS IN ECONOMICS* (2d ed. 2010), available at <http://www.councilforeconed.org/wp/wp-content/uploads/2012/03/voluntary-national-content-standards-2010.pdf>. The authors explain that they neither included any alternative perspectives nor many of the assumptions underlying the twenty standards they developed. They decided against doing so because they believed this would have been too confusing to teachers and students alike, as they likely would not have sufficient information to sort through the alternatives. *Id.* at v-viii.

149. However, in 2005, when the National Council for Economic Education commissioned a study involving a survey and 24-question quiz to determine how much Americans knew about economics, they found that students overall only scored 53 out of 100. Adults did better at 70 out of 100. NAT’L COUNCIL ON ECON. EDUC., *WHAT AMERICAN TEENS & ADULTS KNOW ABOUT ECONOMICS* 5–6 (2005), [http://www.councilforeconed.org/cel/WhatAmericansKnowAboutEconomics\\_042605-3.pdf](http://www.councilforeconed.org/cel/WhatAmericansKnowAboutEconomics_042605-3.pdf).

150. Although I have heard stories which suggest this idea, I have witnessed a law teacher candidate, schooled in economics, engender significant hostility when his sympathetic analysis of Chinese trade laws contradicted several of the foundational premises of neoclassical thought.

theory employs in its method of analysis a fairly sophisticated level of mathematics and modeling, a practice resulting from the historical urge to render the study of the economy more “scientific.”<sup>151</sup> This may have intimidated lawyers and legal academics, among others, from attempting to engage in economic analyses of law. But as Thomas Piketty has shown, much can be explored, analyzed and predicted with very few formulas.<sup>152</sup> In any event, the ability to collaborate with others appeared to welcome and encourage those who did not have a background in economics to do so under the ClassCrit rubric.

But it is neoclassical economics’ central focus, understandings and policy recommendations, particularly as interpreted and implemented through neoliberalism, which organically pushed ClassCrits toward OutCrit analytics in addition to its foundational inclinations.

Neoliberalism, as one of us has suggested elsewhere, is a set of policies and practices inspired by neoclassical precepts and mediated through free market ideology.<sup>153</sup> Two of neoliberalism’s major and widely implemented policy recommendations have been deregulation of the market and privatization of government goods (e.g., research information) and services (e.g., education). These policy recommendations grow out of some of the basic precepts and ideas of neoclassical economics. These include a focus on the market and an entry point, which understands the self-interested, utility-maximizing individual, together with technology and society’s resources, as determining the supply and demand for goods and services.<sup>154</sup> The wants, tastes and talents of the utility maximizing individual are treated as exogenous to the market. When the supply and demand created by these preferences and technology operate in a competitive market, free from barriers, then the market process, neoclassicists theorize, is both self-regulating and optimizes social welfare through efficiently allocating scarce resources.<sup>155</sup> A corollary of this framework is that a person’s wealth or poverty is determined by his choice—to save, invest, or put his endowed resources, including his “hard” work, to productive use. The

151. Many have described or alluded to this history. See, e.g., John Schlegel, *On the Many Flavors of Capitalism or Reflections on Schumpeter’s Ghost*, 56 *BUFF. L. REV.* 965, 967 (2008).

152. See generally, THOMAS PIKETTY, *CAPITAL IN THE 21ST CENTURY* (Arthur Goldhammer trans., 2014).

153. By ideology I mean a “body of doctrine, myth, symbol, etc., with reference to some political, economic or cultural plan . . . along with the procedures for putting it into operation. See *FREE DICTIONARY.COM*, <http://www.thefreedictionary.com/Political+ideologies> (ideology).

154. See, e.g., SAMUELSON & NORDHAUS, *supra* note 145, at 3–18 (discussing the dual monarchy of individual preferences and technology); WOLFF, RESNICK & MADRA, *supra* note 147, at 347–59.

155. See sources cited *supra* note 154.

theory's primary policy recommendation is that government not intervene in the self-regulating market except in limited circumstances.

ClassCrits, for example, rejects the idea that the "market" is some essentialized, naturally occurring phenomenon, like trees, that operates outside of human action and the exercise of power. Rather, markets are policy interventions.<sup>156</sup> As Charles Pouncy notes: "The economic process is not a natural one, shaped by forces beyond human discretion. *Instead, the economic process is an artificial one, shaped by human action through the exercise of power.*"<sup>157</sup> He continues:

It is 'a time-dependent, institutionally determined social system, not a natural system or an automatic mechanism.' Markets are also not natural in the sense that free market economists argue. Instead, markets are policy interventions designed to benefit some and burden others.<sup>158</sup>

Further, the market, as Joel M. Ngugi explains, "is as much the product of state action and regulation as a product of the interaction of rights such as property rights or freedom of contract rights that some might be tempted to regard as 'natural' or pre-political."<sup>159</sup> In other words, "[it] is the result of a dynamic interaction of governmental choices with individual choices; regulatory schemes interacting with deregulatory schemes; politics interacting with economics; and so forth."<sup>160</sup> Ultimately, the market is a legal and social construct, and within

156. Pouncy, *supra* note 142, at 845.

157. *Id.* (emphasis added).

158. *Id.* at 523 (citing WILLIAM M. DUGGER, *UNDERGROUND ECONOMICS: A DECADE OF INSTITUTIONALIST DISSENT* 7 (1992) and Charles J. Whalen, *Money-Manager Capitalism and the End of Shared Prosperity*, 31 J. ECON. ISSUES 517, 523 (1997)). He quotes Dugger as making the following point:

[O]ur economy is more than a market system. Our economy is also a system of power, power that goes far beyond supply and demand in the market, power that extends to the rules and laws that govern specific markets, and power that extends to the benefits bestowed and the burdens imposed by specific markets. The exercise of power, through private means or through public ones, shapes and channels the economic process to the benefit of some and to the detriment of others.

*Id.* at xxii.

159. Joel M. Ngugi, *Forgetting Lochner in the Journey from Plan to Market: The Framing Effect of the Market Rhetoric in Market-Oriented Reforms*, 56 BUFF. L. REV. 1, 6-7 (2008) (citing and drawing on a series of articles by Robert Hale written in the 1920s through the 1940s and arguing that law and the government play a significant role in market relations). Ngugi also draws upon such authors as Duncan Kennedy, *The Role of Law in Economic Thought: Essays on the Fetishism of Commodities*, 34 AM. U. L. REV. 939, 959 (1985) (also discussing the process of naturalizing the market, among other things), and Karl Klare, *The Public/Private Distinction in Labor Law*, 130 U. PA. L. REV. 1358, 1361 (1982).

160. See sources cited *supra* note 159.

that construct, a social category that “justifies and legitimates a wide array of policy prescriptions.”<sup>161</sup>

Further, ClassCrits is also skeptical of neoclassical theory’s almost exclusive focus on the market, which ignores and obscures the context of the market’s social embeddedness and thereby professedly “ignores [is blind to] who has money, access to human necessities, and other goods and services and who does not and why?”<sup>162</sup> Presumably, many of those without money and access to other opportunities fail to work hard enough. This focus also ignores the way in which the market and its primary citizens, large corporations, shape individuals wants, tastes and talents. Instead, it treats all of these wants, talents and endowments as both pre-existing and outside the market’s influence.<sup>163</sup> The theory might explain why those who come to the market with little (despite hard work?), leave the market with little—that is, how the market might perpetuate already existing inequalities. But it does not explain the ways in which those disadvantaged by race, for example, and who come to the market with resources for cars or houses, for instance, are nonetheless disadvantaged by it and other processes.<sup>164</sup> These occurrences may well be the result of group behavior, but in any event, run contrary to neoclassical predictions and confirm the market’s social embeddedness. These realities, thus, encourage attention to context and collective behavior.

Further, while the theory overlooks questions of who has money and access to goods—so that they might play in the market<sup>165</sup>—its primary recommendation, that the government not interfere in the market except in narrow circumstances, seems to preclude the government from addressing the effects of who and why some people have endowments and others do not. These concerns, in addition to the false dichotomy between efficiency and equity, or the proposed tradeoffs between the two in a modern economy,<sup>166</sup> though cursory and among

161. See sources cited *supra* note 159.

162. Mutua, *Stuck*, *supra* note 114, at 113. Perhaps the theory does not focus on these things because it already has an answer: These things are the likely result of an individual’s choice not to work hard.

163. *Id.*

164. See, e.g., THOMAS SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* (2005); Ian Ayres & Peter Siegelman, *Race and Gender Discrimination in Bargaining for a New Car*, 85 AM. ECON. REV. 304 (1995).

165. See Athena D. Mutua, *Framing Elite Consensus, Ideology and Theory & A ClassCrit Response*, 44 SW. L. REV. (forthcoming 2015) (listing the many neoclassical assumptions to which a ClassCrit approach might reject) [Hereinafter Mutua, *Elite Consensus*].

166. See, e.g., SAMUELSON & NORDHAUS, *supra* note 145 (equity verse efficiency). But cf. Martha McCluskey, *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare*

other reasons,<sup>167</sup> also pushed ClassCrits into employing both interdisciplinary and intersectional analytics in its examination of economics in law.

In contrast to neoclassical economics, these analytics find companionship in the study of “political economy,” a concept and analyses expansive enough to constitute a Big Tent approach to economics in law. And it appears that it is an approach many ClassCrit scholars employ. Political economy means different things in different fields and can employ some of the tools of neoclassical economics. However, from a heterodox perspective, political economy tends to emphasize context thereby recognizing “[p]ath-dependent structures, decisions, social patterns, and technologies that exist now (history); the way in which individual preferences are shaped by groups or for that matter, advertisement (culture); and the way laws, rules, policies, and other social arrangements construct, shape and impact markets (politics).”<sup>168</sup> Political economy also focuses on what is actually occurring in the real economy as opposed to a focus on market models. And it often accounts for collective behavior and conflicting interests, including the conflicting interest embedded in class, race and gender, as well as, the eventuality of change.<sup>169</sup>

In fact, in order to understand the changes wrought by neoliberalism, a political economy approach provides substantially more information than a simple focus on the market might suggest. That is, a political economic approach makes visible that neoclassical economics, the intellectual movement upon which neoliberal politics is based, did not rise to dominance simply, if at all, because of the strength of its ideas; but rather, because circumstances and very powerful moneyed interests invested and promoted its ideas.<sup>170</sup> David Harvey argues that the corporations that supported this movement controlled wealth constituting approximately half of the United States’ gross national product.<sup>171</sup> Funneled to think tanks, foundations and the Academy, this funding successfully generated the plausible statistical and theoretical support for neoclassical ideas and recommendations. In other words,

State, 78 IND. L. J. 783 (2003); Martha McCluskey, *The Illusion of Efficiency in Workers’ Compensation “Reform”*, 50 RUTGERS L. REV. 657 (1998).

167. See Mutua, *Elite Consensus*, supra note 165 (providing other reasons).

168. Mutua, *Stuck*, supra note 114, at 113.

169. See generally, RANDY ALBELDA & ROBERT W. DRAGO, *UNEQUAL PLAYING FIELDS: UNDERSTANDING WAGE INEQUALITY AND DISCRIMINATION* (4th ed. 2013).

170. HARVEY, supra note 58, at 20–22.

171. *Id.* at 43.

this is part of the context and historical basis for the rise to dominance of neoclassical economics, initially a small and marginal branch of economic study.

With the elections of both Ronald Reagan and Margaret Thatcher, these investments paid off handsomely with the institutionalization and rearrangement of the economy through neoclassical-inspired neoliberal politics and policies, such as corporate tax cuts, deregulation, privatization, trade liberalization, union busting, precarization of labor and attacks on social programs,<sup>172</sup> a process that deeply involved government action and law. This was/is true, deceptively so, even as free market ideology and fundamentalism, more consistent with the neoclassical framework, disdain and loudly condemn government action and intervention in the market.<sup>173</sup> This process, among other things, such as coded racism and more explicit sexism, promoted the spread of free market ideology and culture. These various happenings, policies, and dynamics of neoliberal politics, as well as their outcomes, among many other practices, constitute neoliberal political economy.

Although many ClassCrits scholars might employ political economic approaches, as lawyers and legal academics, our efforts nonetheless run up against strong strands of individualism, formal equality and thus blindness in law. These strands, in addition to the many neoliberal laws and policies implemented over the last forty years, are more sympathetic to and compatible with the individualistic and market-focused neoclassical framework, even as they might frustrate the stated aims of law; namely, justice.

### *C. ClassCrits, Justice and Anti-Subordination Practice*

Much of ClassCrits scholarship and analyses are spread among law review journals and book chapters as ClassCrits has only recently sought and succeeded in placing its works in symposium journal issues. Nevertheless, the goals of this scholarship are justice, anti-subordinate relations and more egalitarian arrangements, as well as—often—environmentally sustainable alternatives to current practices. This work can be placed in four broad categories.

172. *Id.*

173. Mutua, *Elite Consensus*, supra note 165 (elaborating on this point); see also HARVEY, supra note 58, at 21 (discussing the need for a strong state as rendering neoliberalism less than coherent.).



A first group of ClassCrit work seeks to expose the way in which laws and rules, which support or draw on neoclassical-related theory and/or neoliberal policies and practice have not fulfilled the promises made or are simply unjust or destructive in some form or another. For example, Thomas Kuhner explores the way in which the Supreme Court in using what he calls neoliberal jurisprudence in *Citizens United v. Federal Election Commission* is destructive of democracy.<sup>174</sup> Matt Titolo has recently examined the problems of the market frame or free market ideology and the way it and privatization efforts together, and in particular, often subvert the public interest. He has specifically explored how infrastructure contracts prioritize businesses' profit making over government action meant to protect the broader public interest.<sup>175</sup>

A second body of scholarship exposes the way in which law, and judicial interpretations of law, often work to advantage wealthy people and elite businesses to the disadvantage of working class and poor people. For example, Martha McCluskey in "Constitutionalizing Class Inequality: Due Process in *State Farm*" suggests that the Court in *State Farm Mutual Automobile Insurance Co. v. Campbell* turns a procedural issue into a substantive right in favor of corporate interests at the expense of economically vulnerable people.<sup>176</sup> Similarly, Michelle Gilman, in addition to examining the Supreme Court's decision in *Citizens United*, looks across a number of areas including education, in which, she argues, the Court decides cases in ways that enhance corporate and elite power but undermine efforts to support, for example, poor children of color, particularly in the educational context.<sup>177</sup>

A third set of articles can be categorized as exploring the intersection of economic and/or class structures with other subordinating structures and practices. For example, Amy Kedron, while exhorting the potential community-building aspects of local businesses, exposes the way in which both local and national markets are racialized to the disadvantage of people of color. She does so through examining the

174. Timothy Kuhner, *Citizens United as Neoliberal Jurisprudence: The Resurgence of Economic Theory*, 18 VA. J. SOC. POL'Y & L. 395 (2011).

175. See Matthew Titolo, *Leasing Sovereignty: On State Infrastructure Contracts*, 47 U. RICH. L. REV. 631 (2013); Matthew Titolo, *Privatization and the Market Frame*, 60 BUFF. L. REV. 493 (2012).

176. Martha McCluskey, *Constitutionalizing Class Inequality: Due Process in State Farm*, 56 BUFF. L. REV. 1035 (2008).

177. Michelle Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality* 2 UTAH L. REV. 389 (2014).

history of the originators and sellers of the Buffalo Wing in Buffalo.<sup>178</sup> For another example, Sarudzayi M. Matambanadzo introduces a new conceptual framework for pregnancy and employer discrimination against pregnancy-related activities such as breastfeeding, caring for newborn infants, and recovery.<sup>179</sup> The framework she introduces centers around the concept of a Fourth Trimester.<sup>180</sup> She suggests that discrimination occurring during this time and around these activities should be prohibited by law.<sup>181</sup>

And finally, a fourth group, the largest group of analyses tend to explore alternative laws and practices and compare them to currently organized systems and policies. They range, for example, from papers such as Phyllis Taite's article, which asks: who benefits from three personal tax issues, namely, the mortgage interest deduction, the estate tax exemption and rate, and the estate tax-related rule on marital portability?<sup>182</sup> She suggests they benefit those who are well-off and argues that they should be reduced or eliminated.<sup>183</sup> While Elizabeth Carter, in a forthcoming essay discusses how "sharing law," where community members engage in bartering and other support efforts, might improve life in poorer communities.<sup>184</sup>

All of these ClassCrits articles, among many others, contemplate anti-subordination justice. They seek to change both the elite and everyday consensus that life has to remain as currently organized. This is contrary to historical neoliberal assertions that there is no alternative (TINA) to the policies and visions neoliberalism has to offer.

### III. CRITICAL FORAYS: FRESH DEPARTURES IN OUTSIDER JURISPRUDENCE

The seven articles in this Symposium tackle an array of urgent issues and offer fresh readings with innovative, even provocative, solutions designed to generate new departures and strengthen discourse across multiple lines of OutCritical inquiry especially germane to traditionally subordinated communities. Many of these issues therefore

178. Amy Kedron, *Stock Symbols, Street Signs and Other Color Lines: Capital and Subjectivity in the New Dual Economy*, 43 SW. L. REV. 629 (2014).

179. Sarudzayi M. Matambanadzo, *The Fourth Trimester*, 48 U. MICH. J.L. REF. 117 (2014).

180. *Id.*

181. *Id.*

182. Phyllis Taite, *Exploding Wealth Inequalities: Does Tax Policy Promote Social Justice or Social Injustice*, 36 W. NEW ENG. L. REV. 201 (2014).

183. *Id.*

184. Elizabeth Carter, *Community Planning, Sharing Law and the Creation of Intentional Communities: Promoting Alternative Economies*, 44 SW. L. REV. (forthcoming 2015).

have occupied outsider scholars in general, and the LatCrit community in particular, for some time. Yet, these symposium articles carefully and creatively build on earlier lines of OutCrit engagement, opening new avenues for reflection and praxis in the turbulent times that the coming decade heralds. As this community effort puts on display, the next generation of critical outsider scholars has arrived.

Unsurprisingly, the range of the papers that follow spans key levels of structure, justice and identity that construct life for millions across and beyond the United States in local, national and global contexts. The first three articles engage the Constitution of the United States, bringing to the fore new lenses through which to unpack old justice riddles. The next two address questions of the international order, remapping the politics of power that settle the destinies of humanity, both collectively and individually for profit and status. The last two take on enduring issues of legal education, interjecting timely reminders of OutCrit fundamentals at a moment of professional hysteria. As one whole, these critical forays point toward fresh departures in outsider jurisprudence that respond to the challenges and contradictions of today and tomorrow in law, education and society.

Professor Jorge R. Roig offers a bold and creative solution to the capture of Congress by wealthy interests through unbridled spending in political campaigns, while preserving the spirit of the Free Speech Clause of the Constitution of the United States. His point of departure is the Supreme Court's pronouncements about the seemingly intractable conflict between campaign finance reform and the First Amendment, whereby the Court has sacrificed attempts to contain the influence of money on election at the alter of freedom of speech. He argues that while the unchecked role of money in election has corrupted democracy, the Court's reading of imperatives of free speech is fundamentally correct. He surveys the salient solutions to this conundrum on the offer, and finds these deficient.

Professor Roig proposes that elections to the legislatures be dispensed with. Instead, legislators should be randomly selected from the general population. Citing the success of the jury system and varied random selection practices of polities throughout history, he argues that random selection of legislators will abide by the principle of democratic self-governance, retain the republican ideal of collective deliberation, and immunize legislatures from the influence of moneyed interests.

Professor Roig's audacious and delightfully provocative proposal underscores the urgency to contain the influence of moneyed interests on politics and the state. He braids surgical dissection of case law, succinct analysis of solutions proposed by others and a balanced presentation of the pros and cons of his own proposal. His intervention should trigger searching inquiries into a host of related questions. How can any polity balance liberty, equality and fraternity—the three promises of modern republic? How can liberal constitutionalism temper liberalism's fidelity to liberty of the possessive individual? Would random selection of legislators be feasible at all levels of government—federal, state and local? Are legislatures the only governmental apparatus subject to influence by moneyed interests? Are elections the only public arena where money asserts disproportionate weight? By opening the door to these vital questions, Professor Roig has done an invaluable service to scholars and all members of the polity.

Professor Atiba Ellis's point of departure is disenfranchisement of populations that are largely poor, and mostly of African and Latino descent. He is particularly concerned that, in the neoliberal era, the Supreme Court has concurrently elevated the political role of corporations and the wealthy while further suppressing voting rights of the poor and people of color. He brings into sharp relief the long and sordid history of suppression of the right to vote in the United States, and through a succinct survey of exclusions of the poor and racial minorities from the electoral process he articulates a theory of tiered personhood.

Professor Ellis argues that the Supreme Court has always drawn boundaries of legal personhood, thereby creating a hierarchy of eligibility to exercise rights of citizenship. Such delineation of tiered personhood and deferential eligibility constitutes and sustains structures and processes of subordination. He further argues that hyper-regulation of voting by the states and disenfranchisement of felons are new expressions of tiered personhood and subordination, as they further diminish citizenship rights of the poor and racial minorities. In the process, a post-racial ideology is cultivated and majoritarian tendencies are strengthened. The result is the creation of two sets of citizens: those with full political rights and a permanent underclass with diminished rights. Finally, Professor Ellis recommends elevation of inclusiveness as the prime democratic value and a communitarian reconception of American political community based on a premise of inclusion. He expects that this new foundational value would propel

doctrinal shift in the jurisprudence of the right to vote to favor the marginalized facilitated by a new constitutional standard upholding liberal access to this right.

Professor Ellis's linking of felon disenfranchisement and voter suppression among racial minorities with foundational conceptions of political community is most productive. This combined with framing questions of exclusion along historical trajectories opens up a space for further reflection and inquiry about a host of related questions. Are historical trajectories of social and political phenomena linear or do they go through breaks, reversals and retrenchments? Are phases of progress and retreat by way of political inclusion linked with cycles of economic change and shifts in the labor markets? How have demographic changes disturbed patterns of exclusion in U.S. history and how are they likely to play out in the future? How can liberal constitutional designs balance values of liberty and community? What possibilities of alliances and concerted action are available to different communities and groups within the matrix of political inclusion/exclusion? By opening up these avenues of inquiry, Professor Ellis has done an invaluable service to outsider knowledge production.

Today, the United States has the dubious distinction of having both the largest prison population and the highest per-capita incarceration rate in the world. Note that the 700 percent increase in the prison population since the early 1970s has been contemporaneous with rise of neoliberal political economy, rollback of the welfare state and backlash against racial minorities. Professor Spearlt argues that the Supreme Court's jurisprudence about the "cruel and unusual punishment" clause of the Eighth Amendment has facilitated this incarceration explosion. His focus is on the "evolving standards of decency" doctrine, which he contends has eviscerated the promise of the Bill of Rights as a bulwark against tyranny of the majority in the area of criminal law. The result is millions behind bars, long prison sentences, degrading and inhuman treatment of prisoners, mental and physical ailments, and ever-greater obstacles to reintegration of ex-prisoners in society. Communities of color have suffered the brunt of these ominous developments as the evolving standards of decency doctrine became a weapon wielded by forces of backlash and retrenchment to roll back civil rights secured by racial minorities in the 1950s and 1960s.

Professor Spearlt posits that the "evolving standards of decency" gloss over the "cruel and unusual punishment" doctrine originated as a form of Social Darwinism and as a Whiggish commitment to progress

in a maturing society. This was in tune with an approach to the Constitution as a living document. The flaw, however, was the underlying assumption about one-way evolution of social mores. Instead of facilitating progressive jurisprudence based on contemporary knowledge, the doctrine first triggered unconstrained exercise of judicial will and later legitimated legislative prerogative. In sum, he sees the doctrine as legally wrong, analytically unprincipled and socially harmful. In his view, a literalist approach to the Constitution, even as it harkens to an originalist perspective, may be more productive to deal with the incarceration crisis. In the end, he argues for sentencing to be informed by scientific knowledge about the human psychology. This, he argues, will align punishment laws with humane decency and the spirit of the Eighth Amendment.

This thoughtful intervention about an urgent question would be of great interest to legal scholars and policy makers alike. The article is also an invitation for further thought and research. Can literalist and originalist approaches to the Constitution yield answers responsive to felt needs of changing times? How legal doctrines initially conceived as progressive instruments can turn into regressive tools? Besides politics of backlash and retrenchment, how might the neoliberal restructuring of the economy be related to the incarceration explosion? The proposal that sentencing be informed by scientific knowledge warrants further exploration. In this context, one will have to contend with the entanglement of knowledge with power. Emulation of methods of natural sciences and protestations of value-neutrality notwithstanding, endeavors to produce “sciences” of society remain, perhaps unavoidably, enmeshed with spatial and temporal contextual economic, political, social and cultural matrixes. In this respect, knowledge of society is no different from law itself. Proposals to anchor law in knowledge of society must address this ever-present dilemma.

The next two articles address the capitalist international economic order, and attendant politics and public policies. Capitalism from its inception is a global mode of production marked by global flows of capital, commodities and labor. Global flows of commodified labor, orchestrated by the drive for capital accumulation, and facilitated by colonial and post-colonial political orders, have left in their wake vexing problems. One particularly intractable problem that global labor flows like slavery, indentured labor and guest-worker programs have engendered is conflicts of interest between immigrant labor and indigenous populations. These conflicts span the globe, from Fiji to the Gulf

States and from Uganda to Trinidad. Professor Rose Cuison Villazor takes up this question as it has played out in the Northern Marianas, the Pacific Islands that changed hands among colonial masters since the early sixteenth century, and became a U.S. Commonwealth in 1986, with the indigenous population granted U.S. citizenship. Today, temporary contract workers, mostly from China and the Philippines, constitute nearly half the population of these Islands.

Conflicts between these immigrant groups and indigenous communities on the Islands came into sharp relief as the U.S. Congress, which retains sovereignty over immigration matters of the Islands, initiated steps to grant temporary workers long-term residency rights, which could lead to U.S. citizenship. Indigenous groups, fearful of losing economic and political ground if the temporary workers gain security of residency, strongly oppose any attempts to give guest workers a path to lawful permanent residence and citizenship. Contending that both arguments raise important anti-subordination claims, Professor Villazor argues that resolution of the issue requires a close examination of the historical, cultural and economic factors that led to this issue. She builds on Ayelet Shachar's *jus nexi* principle as grounds for citizenship to argue that Congress should provide the guest workers with a path to become permanent members of the American polity.

Adding *jus nexi* to *jus soli* and *jus sanguinis* as grounds for citizenship and making fairness and equity prime values in debates about grant of citizenship furnishes a productive framework to negotiate intersections of labor markets that are global and citizenship that remains tethered to the bounded state. Further explorations of the question would do well to keep in mind that "soil" and "blood/family" are also types of nexus. The critical question remains: what does and what does not count as nexus eligible for recognition as grounds for membership in a polity? Note that while physical presence and expenditure of labor power is generally not recognized as recognized nexus in this context, investing capital is. Residency and citizenship in many countries, including some with otherwise very strict immigration regimes, can be readily purchased with prescribed amounts of capital. The nexus of labor also raises as many questions as it answers. For example, how should we comparatively weigh the nexus between undocumented laborers at an Archer Midland Denial (ADM) farm in Iowa versus laborers at an AMD farm in Guatemala?

By bringing to the fore yet another instance of color-on-color conflict and intergroup justice grievances between immigrants and indig-

enous communities, Professor Villazor's intervention implicitly re-opens the question of the relationship between capitalism, modernity and indigeneity. Furthermore, is the deepening contradiction between ever-accelerating global circulation of capital and commodities and ever-tightening immigration regimes around the globe sustainable? The trajectory and proposals of this article should trigger further explorations of the multi-dimensional contours of the phenomenon of global flow of bodies and labor power.

Professor Shalanda H. Baker takes up the delicate relationship between the global environmental crisis and development. Specifically, her focus is the ever-accelerating climate change engendered by fossil fuel-based industrialization and modern life, which today threatens the wellbeing and survival of substantial parts of humanity, particularly in the Global South. She first summarizes the scope of the problem and underscores that in this era of extreme economic instability and inequality, the link between climate change, poverty and vulnerability has become unmistakable. She then argues that the model of development the Global South has been obliged to pursue in the neoliberal era, based on privatization, liberalization and free trade presided over by multinational corporations and global banks, has accelerated the environmental crisis. She critiques the contending models dealing with climate change and finds those counterproductive due to their timid goals and reliance on the same development policies and institutions that exasperated the problem in the first place. Finally, she proposes an alternative vision of development that is community-driven and combines sustainability, protections of the commons, and decentralization. She urges that legal constructs and regimes that have facilitated neoliberal development need to be reimagined and reordered to enable this alternative vision of development that is a viable response to the challenge of global climate change.

Professor Baker has taken up perhaps the most urgent global crisis of our time. Her succinct presentation of the scope of the problem and solutions on the offer will facilitate non-specialists to join the critical conversation about desirable and sustainable modes of collective material existence. Her interventions also opens the door for addressing some related foundational questions. Has the neoliberal model of economy created the global environmental crisis or simply accelerated it? Is the search for alternative models of development sufficient or do we need to conceive alternatives to development? Can the search for sustainability avoid the question of logic of capitalism, one that propels



incessant and ever-expanding commodification of nature and human life? Is the poison seed of environmental destruction sowed by the very idea of progress, the foundational building block of modernity?

The last two articles take on enduring issues of legal education that have become more urgent in the aftermath of the Great Recession. Legal education in the United States, as we discussed above, is said to be in extraordinary crisis. Typically, dwindling applications, escalating tuition, rising student debt and shrinking job markets are blamed for the proverbial perfect storm. The response of the legal Academy thus far remains defensive and timid. Tinkering with the curriculum at the margins and gradual adoption of neoliberal models of education, particularly supplying unpaid labor under the guise of experiential learning, are the usual responses. Professor Sheila I. Vélez Martínez's article is a timely intervention that expands the canvas of the agenda of discussion in the midst of the crisis. This intervention illustrates the reassertion of justice as a pre-eminent legal value in response to the politics of austerity carried forward by the cries of crisis.

Professor Martínez first discusses how traditional teaching practices in the legal academy reinforce systemic discrimination, exclusion, subordination and oppression within the classroom. She then traces discussions about pedagogy in Outcrit literature and proposes that teaching techniques within the classroom have to reflect anti-subordination perspectives. Building on the work of Paulo Freire, Derrick Bell and others, she proposes that teaching from an anti-subordination perspective requires praxis of collaborative, non-hierarchical teaching—a praxis that does not assume that the professor is all-knowing and should occupy center stage in the classroom—a praxis that frees the student to think independently and leads to an experience of a non-oppressive dialectic relationship between students and professors. Finally, she offers specific examples of practices that can help build a more democratic and inclusive classroom.

Professor Martínez's intervention should prompt further OutCritical explorations of a myriad of related questions. How might curricular content and pedagogy overdetermine each other? How productive can individual initiatives to create more democratic and inclusive be unless the larger underlying grammar of legal education is transformed? Can legal education skirt the neoliberal model of education that mandates privatized and debt-ridden self-management of human capital for increasingly precarious labor markets?

Professor Kim D. Chanbonpin seeks to turn the current zeitgeist of crisis in legal education into an opportunity to expand the use of “trigger warnings”—advance content notices to alert students about any potentially trauma-inducing course materials. She first lays out the contours of the neoliberal restructuring of higher education that wears tropes of austerity, deregulation, efficiency and consumer-oriented servicing. The restricting involves corporatization, diminished public funding, rise of student-debt, contraction of faculty governance and threats to academic freedom. She then explains that as law schools are embracing neoliberal strategies in response to the economic crisis caused by declining admissions, students have begun to agitate for “trigger warnings” to alert them to any potentially trauma-inducing course materials. For faculty who have already adopted a defensive posture in response to threats to eliminate tenure, this demand feels like an additional assault on academic freedom; one that reflects a distressing student-as-consumer mentality.

Professor Chanbonpin argues for a decoupling of the trigger-warning movement from the broader phenomenon of the neoliberal law school. She presents an alternate reading of trigger-warning mandates: as a student-initiated critique of legal pedagogy that demands access and opportunity for all students to fully engage in classroom discussions that can be difficult and may often be painful. She argues that trigger warnings give lie to the myth that law is based on dispassionate and objective legal analysis. Seen this way, trigger warnings invite students to become partners in the production of knowledge, while allowing faculty to maintain intellectually rigorous classroom environments. She argues that faculty cannot afford to view students as antagonists. Instead, students should be enlisted as allies in our efforts to challenge the orthodoxy of market-based solutions to the legal education crisis.

Professor Chanbonpin’s succinct encapsulation of how crises are opportunities for political forces to dramatically advance their agendas is very productive. It should help us appreciate the extent to which the Great Recession of 2008 has presented opportunities to the forces of reaction to further rollback gains made by the subordinated and marginalized during the era of Keynesian welfare. It should also help the search for progressive responses to so-called austerity measures within and beyond the Academy. Her espousal of trigger warnings also raises many questions that warrant further explorations. To what extent do trigger warnings cater to student-as-consumer and education-

as-commodity complexes? To what extent is the trigger warning a symptom of unmoored identity-politics? Who should decide what is or is not an issue that warrants a trigger warning?

This collection of articles begins only to illustrate the daunting challenges ahead in law, education and society. But they also begin to chart ways through the contradictions that construct these challenges. These beginnings show rising generations of LatCrit and OutCrit scholars tackling the legacies of inequality and injustice that the recent politics of crisis and austerity have exacerbated. These beginnings show the forward-looking vitality of OutCritical discourses and networks, even as they also signal the scope and depth of the justice work before us all.

### CONCLUSION

This Symposium helps to mark a special moment in the ongoing development of critical outsider jurisprudence in the U.S. legal Academy: the twentieth anniversary of the LatCrit. From the outset, this particular OutCrit experiment has emphasized academic praxis at both personal and collective levels of engagement. This emphasis reflects and promotes an approach to knowledge production that eschews the atomized elitism of the imperial academy for the programmatic collaboration of this democratic model. This approach interconnects theory to practice to community, and frames praxis in long-term perspective.

This emphasis on academic activism reflects the conditions from which the LatCrit experiment emerged in 1995, and which continue to define this historical moment both in law and education, and across society. As a result, today LatCrit-OutCrit formations are more extensive and resilient than ever, while at the same time more besieged and threatened. Under these circumstances, our challenge has been—and is—to reinvent our personal and collective praxis as we remain constant in our convictions.

This Symposium, as a community project, reflects LatCritical counter-tradition in democratic knowledge production that emphasizes the synergies of theory, community and praxis. The critical forays interrogating the state, globality and education in forward-looking terms signal new departures in ongoing lines of inquiry toward a post-subordination society grounded in equal justice for all. The articles mark new lines and open new questions to advance anti-subordination progress. By all appearances, the rising generations of LatCrit and allied scholars are ready to take the lead as we face both old and new

challenges, contradictions and crises that obstruct the historic, incomplete, quest toward equal justice for all.



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